VOL. XXV
24283

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, [redacted] 1921

Term No. [redacted]251

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, EDWARD SWANN, AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK AND LEWIS NIXON, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK, RESPONDENT.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 17, 1921

(File No. 28144.)

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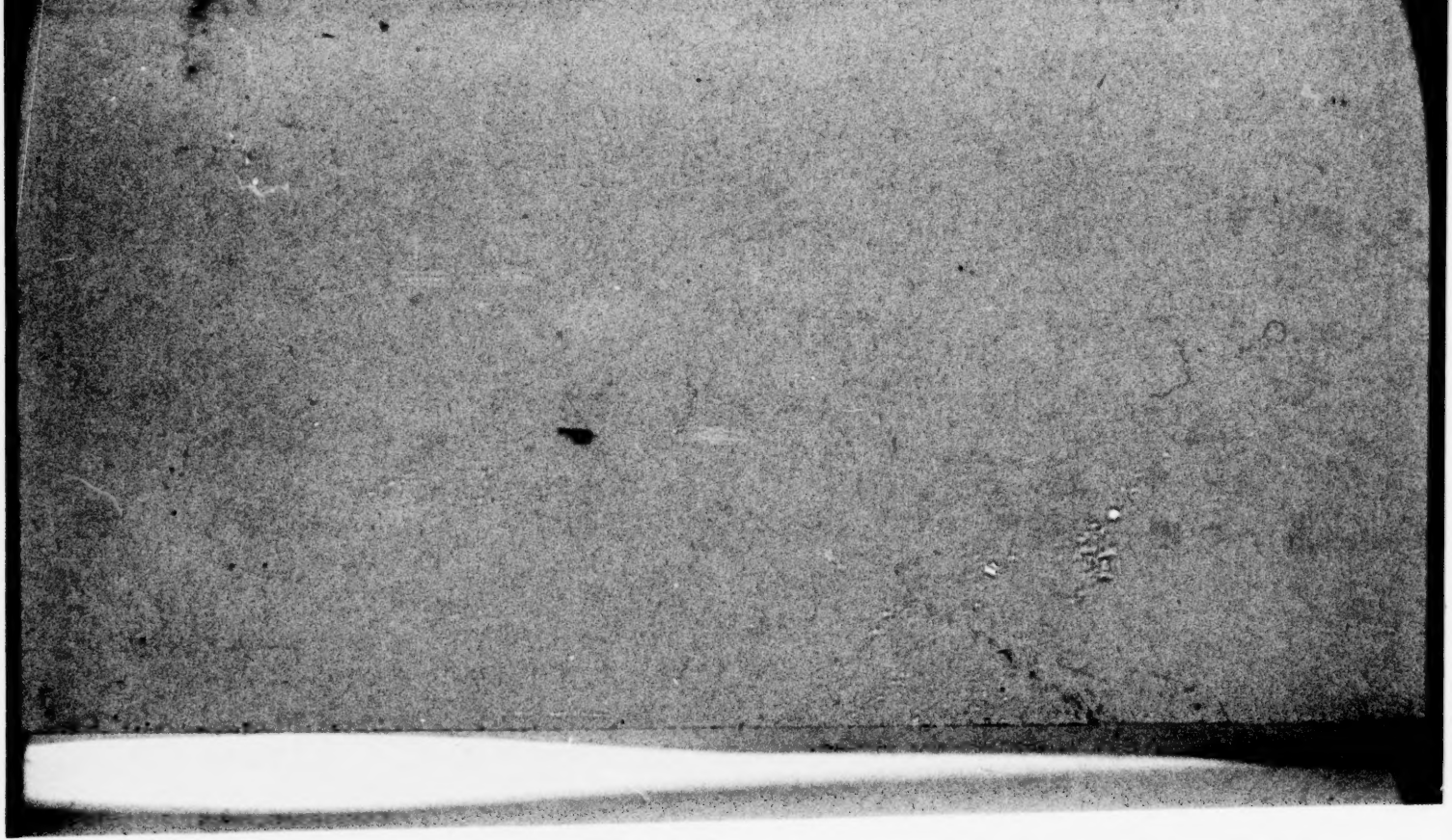

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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 41617

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, February 25, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 41618
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Ransom: Before I proceed with the cross-examination of Mr. Maltbie, may I hand to Major Clark the original tests sheets with a list covering ninety-seven tests during 1919 at the various stations shown on the list, all of which, according to complainant's computation from the City 41619
tables are incorrect, even assuming the accuracy of the noted observations. I intend to prove that as part of my rebuttal, including the ninety-seven referred to. I hand him these now so that if Mr. Birdsley thinks any of these ninety-seven are correct he will be able to show it.

Mr. O'Brien: I object to that comment and remark going on the record.

The Master: I think it is a perfectly proper statement to make. Go ahead. I don't see where it is open to any possible criticism.

Mr. O'Brien: Do you think it is proper to allow him to testify on the record as to these things—

The Master: I think it is perfectly proper for him to say that on rebuttal he will offer certain evidence, so that Major Clark can check it up and interrogate his witness about it. I think it is not only proper but it is what I should have liked to have had done all the way through.

Mr. O'Brien: He has drawn the conclusion that they are incorrect. He comes forward with
41621 an envelope and says, "I have a pile here, and there are so many, and they are incorrect," and hereafter in his brief he will be referring to that page of the minutes.

The Master: There was a pile of them.

Mr. O'Brien: There was a pile of papers, but whether they are correct or not remains to be seen.

The Master: He says he is going to bring a witness to testify that they are not correct. That is perfectly proper. Go ahead.

MILO R. MALTBIE, resumed:

41622 CROSS-EXAMINATION CONTINUED BY MR. RANSOM:

Q. This cost figure of $125,000 for what you designate as Block 989, Lot 1, on the present tax map, represented cost in what year?

A. I said the whole block of which that is a part, as shown by Senate Document No. 47, cost $125,000.

The Master: When was it purchased, when was it bought.

A. 1857, as I recall.

The Master: That is my recollection.

Mr. Ransom: 1855 or 1857.

The Master: That is close enough. I think it was 1857, I had it before me.

Q. What area did you assume for the whole parcel which you say cost $125,000 to the predecessor company in 1857?

A. Substantially the block.

Q. What area in square feet?

A. I have not the area in square feet.

The Master: It is the block now shown on the tax map?

The Witness: Yes, substantially that.

Q. Is it the block shown on the present tax maps 41624
and on Exhibit 178 as comprised between Avenue C and Avenue D and East 16th Street and East 15th Street?

A. Substantially so. I don't think there was an Avenue D in 1884.

Q. Is the area which you have assumed the area which extends only to what at some time was known as Avenue D? That is, did you include simply the area, assign this $125 simply to that area?

The Master: Well, that block between Avenues C and D is 676 feet?

The Witness: Right.

The Master: Did you assume 676 feet? 41625

The Witness: I did, in apportioning it.

Q. Where did you assume that in 1855 the bulkhead line was with respect to Avenue C, or what later became Avenue D, or the East River? Where did you assume the bulkhead line was?

A. I think I answered that yesterday in answering the Master's question.

The Master: Mr. Maltbie very frankly stated that he had no idea where the bulkhead line was. He figured it on that block as it now stands.

The Witness: That is correct.

41626 Milo R. Maltbie, Cross.

The Master: And he very frankly admitted that he didn't know anything about it, evidently anticipating what you had in mind, that possibly there was an error there. You can't do anything more than establish the point.

Q. Do you assume that in 1884 the boundaries of this lot referred to in Senate Document No. 47 as having been acquired by the predecessor company in 1855 or 1857, for $125,000 were the same as they were in 1855 or 1857?

A. I assumed that the land at that time was at
41627 least 676 feet long with the same width as now given which, I think, is 198 or 200 feet; about that.

The Master: It is 200 feet 6 inches.

Q. From what part of Senate Document No. 47 did you get any such dimensions east and west for that property referred to in Senate Document No. 47?

The Master: The question is not allowed. It is fully covered. Mr. Maltbie did not get it from Senate Document No. 47, and admitted that he couldn't get it from Senate Document No. 47. All he knew was that there was a plot of ground referred to in Senate Document No. 47 which
41628 ran from 15th to 16th Street, and Avenue C to the East River. If that statement is not correct he will correct me.

The Witness: That is correct.

The Master: It is quite apparent to me, and it must be apparent to the witness that he assumed a basis that did not exist, and which he didn't have any right to assume.

Mr. Chambers: I except to that.

The Witness: No, that is not it. If there was more land there than 676 feet, then I have

over allowed the amount, and if there was less land I have under allowed the amount.

The Master: It is a pure guess as to which was right.

Mr. Chambers: No, why do you say it is not the same as it was back there?

The Master: I say, Mr. Chambers, it is pure guess as to where the East River was in 1857. What is the use of talking about it?

Mr. Chambers: I take an exception. It is susceptible of proof.

The Master: I am going to use my common 41630
knowledge of Manhattan Island. I know that the North River high-water line in 1857 below 14th Street—just where or how far it went I will not be sure, but in sections of the North River at any rate it was a good deal further east by hundreds of feet than it is now. I shall also assume that the same condition applied on the East River, that the high-water line was a good deal west of the point where it is now.

Mr. Chambers: Yes, but do you know that years ago the high-water mark was fixed on that river, and whether it changed or whether it did not change, as I understand it, that fixed the 41631
high-water line years and years ago. No matter how it changed the property belonged to the people of the State of New York outside of that line.

The Master: The point I make is that Mr. Maltbie does not know where the high-water mark was.

Mr. Chambers: It doesn't make any difference, I think, if that line has changed. The Legislature fixed the boundaries of the land owned by the people and riparian owners.

Mr. O'Brien: Your Honor seems to forget in

41632

this matter the effect upon this situation of the complainant not producing the books.

The Master: Yes, I understand all that. What I want to make perfectly clear is that the minute I brought out, anticipating as apparently I did correctly, that Mr. Maltbie did not know where the East River was in 1855 or 1857, that ended it.

Mr. Chambers: You are both in error, because it doesn't make any difference where the high-water mark was. The Legislature years ago fixed the high-water mark no matter where the water
41633 went to or receded to, that high-water mark remained fixed.

Mr. Ransom: That statement is not true.

The Master: That is argument—go ahead.

Q. Did you, as a witness for the Attorney-General examine the evidence submitted by the Attorney-General in the action brought against the Consolidated Gas Company in 1907, and the subsequent litigation in respect to the Willard Parker Hospital condemnation proceeding, in which part of that evidence previously perpetuated was also put in evidence with respect to the location of the high-water mark on this property referred to in Senate Document 47?

41634 A. I did not.

Q. Did you learn from that evidence—

A. If I did not examine it I did not learn anything.

Q. Or from any source, that the bulkhead was located at such a point on this property that with the larger type of sailing vessel the bowsprit in 1857 extended into Avenue C?

A. I did not.

Q. With respect to this 1857 purchase at $125,000, and the subsequent acquisition of property by the Consolidated Company in 1884, did you learn from any source the year in which Avenue D and Tompkins

Street was each opened through the property referred to in the Yalden report as acquired in 1855 or 1857?

A. I did not.

Q. You did not learn that those streets were opened in 1865?

A. If I did not learn it for any date I did not learn it for some date.

Mr. Chambers: How much did you get for the property taken for the streets?

Mr. Ransom: He makes no allowance for that, evidently, if he didn't know it.

Mr. Chambers: Well, that cuts it down some- 41636
what.

Q. Now, in making up this calculation of the assumed cost of this land did you in any wise use the data in the report of Marwick, Mitchell & Co.?

A. I did not.

Mr. Chambers: I tried to get that in evidence, but it was objected to.

Q. What did you assume to be the cost of the portion of the property of the 21st Street station known as Lot 35, Block 951; Lots 7 and 35, Block 952; Lot 1, Block 953; part of Lot 5, Block 978; Lot 6, Block 978; Lots 1 and 27, Block 979; and Lot 37 of Block 987? You assumed or computed a cost for all 41637
of that property together, didn't you?

A. Yes.

Q. What did you assume was the cost of all the property together?

A. As shown in Senate Document 47?

Q. What did you assume?

Mr. Chambers: He did not assume.

A. I have got to have some date to start with.

Q. What figure for that property did you assume?

The Master: What do you say was the cost to some constituent company of this property,

what was the constituent company, and where did you find it?

The Witness: The constituent company was the New York Gas Light Company.

The Master: How much do you say they paid for this and where did you get it?

The Witness: $380,500; not more than that.

The Master: How did you get it?

The Witness: There are two ways that I got at that.

The Master: Let us have both of them.

41639 The Witness: The first one I have here in order—page 711 of Senate Document 47, under the heading, "B. New York Gas Light Company, Capital Investment," etc., opposite the year 1870, in the column headed, "Real Estate" under a broader column headed, "Investments," which includes in a separate column works, apparatus, meters, mains, etc., there is given under the head of "Real Estate," $360,500.

The amount of real estate was increased before the end of the next year as there shown, to $1,300,000, which was an increase of $933,500.

Between 1871 and 1883, just before the trans-

41640 fer of the property there was an increase in the real estate account of $20,000. I added that to the $360,500, making $380,500.

The Master: Why didn't you add the $933,500?

The Witness: I am coming to that in a moment. Upon page 720 there is shown under the heading, "Particulars of Credit to Surplus Capital Account, June 1, 1871, as extracted from the books," appreciation on Hester Street property, appreciation on real estate at works of $933,500, so that according to that statement the appre-

ciation on the real estate at the works was $873,500. That is one of the reasons why I did not put that in, because it was written up to real estate at the works in 1871. In the testimony at pages 437 and 438—shall I read that testimony beginning at the bottom of the page?

The Master: No, just refer to it.

The Witness: In the testimony, pages 437 and 438, those figures are used and a further explanation made.

Now, working the other way, the total real-estate, the total amount at which the real estate 41642
of the New York Gas Light Company went on to the books of the Consolidated Gas Company was $1,957,000. The pages of testimony to which I have referred show that there were two write-ups of the value of this real estate, one in 1871—

The Master: Which you have referred to?

The Witness: Yes. The other is given in the testimony and shown by deductions of $637,500. Taking those two amounts and adding them together, and subtracting them from the $1,900,000 we get $386,500.

Now, there is this possibility, and I think it 41643
is correct, that the Hester Street property is included in the $386,500 according to those figures; but nevertheless I took the $386,500. If it is included in those figures of $386,500, that amount is too large to that extent.

The Master: Now, go ahead, Judge Ransom.

Q. On any of these pages of the Yalden report to which you have referred, did you find any reference to the 21st Street station?

A. You mean by name, Twenty-first Street?

Q. Yes.

The Master: By reference, or reference to real estate.

Q. (Continued.) By name, or any reference which enables you under oath to say that only the property concerning which I am now interrogating you is meant?

A. Well, there is testimony in here showing that the works taken over from this company was the 21st Street works.

The Master: That is not the inquiry. The
41645 inquiry is, is there anything there that identifies the real estate referred to as $366,500?

The Witness: By metes and bounds?

The Master. As being property located at 21st Street, or 18th Street, or anywhere else.

The Witness: I do not recall anything except in the way I have just stated.

The Master: The inference you have drawn—

Mr. Chambers: He said there was.

The Master: The witness says that the works taken over by the Consolidated Company was the 21st Street works.

Mr. Chambers: He says there is something
41646 in the testimony which says so.

The Master: Yes, from which he infers that the real estate referred to was this same property.

Q. Now, this figure of $386,500, and $366,500—

A. I mentioned no $366,500.

The Master: Yes, you did.

The Witness: Yes, but that was adding two figures together to get the total.

The Master: That is the figure Judge Ransom is referring to.

Q. It was $366,500 at the time, according to the Yalden report, of the acquisition in 1870.

A. Well, I don't know what acquisition you refer to in 1870. It was acquired some time before.

Q. In what year was $366,500 the cost of this land to the New York Gas Light Company?

A. It was the cost of the land that the company owned at that time, in 1871.

The Master: 1870.

The Witness: Maybe it was 1870.

Q. In what year, if any year, are you able to say that this land cost $366,500 to the New York Gas 41648
Light Company?

A. Well, in 1870.

Q. Did they buy it that year?

A. No.

Q. What year did they buy it?

A. Pages 710 and 711 show the balance—

Q. When did they buy it, have you any idea?

A. I don't know when they bought those precise parcels of land.

Q. How much did they pay for it?

A. I don't know what they paid for it, for this precise parcel of land, except as I have stated.

Q. What are the metes and bounds of what they 41649
bought?

A. I don't know except as I have stated.

Q. What property do you know—have you any way of telling definitely what property the company owned in 1850 or in 1870?

Mr. Chambers: We will tell you if you will give us the books.

A. None except as I have stated.

Q. All you know is that when they turned over property, sold it to the Consolidated Gas Company in

41650

1884, they had a manufacturing plant at 21st Street, and a branch office at Hester Street?

A. No, I know more than that. The schedules attached to the first 21 pages of the journal in evidence show the property then turned over by lot and block number. There is a map of it.

Q. Yes, but is there any way that you can tell that the New York Gas Light Company in 1870 and 1871 did not own other land beside 21st Street?

A. Well, I don't know it absolutely.

Q. Or less.

41651 A. I don't know it absolutely, but if they did I have included it here.

Q. Is there any way that you can tell that the 21st Street works in 1870 comprised more than one-half of their dimensions in 1884?

A. I haven't any figure of one-half in mind.

By the Master:

Q. Or any percentage?

A. Nor any percentage, no.

Q. In other words, the point that Judge Ransom is making is that all this schedule shows is that in 1870 the New York Gas Light Company owned certain property worth, or carried into its books at

41652 $366,500, but you can't tell from anything you have seen just what that was, except that you have inferred it was the same property that they had later on?

A. Well, more than that. In the entire report of Yalden and the testimony of Yalden he has undertaken to determine what was the cost of this property as shown by the books of the underlying company, that is, the property which was transferred in 1884. That we know from the further evidence in Senate Document No. 47.

Q. If Yalden was wrong you are wrong?

A. That is correct.

Mr. Ransom: There is nothing to show what the company owned in 1871, there is no one living that knows.

The Master: That is argument.

Mr. Chambers: Produce the old books and we will tell you.

The Master: Mr. Maltbie admits that if Yalden is wrong he is wrong.

Mr. Chambers: If we had the old books we could work it out ourselves.

The Master: I know all about these speeches on the record. 41654

Mr. Chambers: Well, that is so.

By Mr. Ransom:

Q. Did you assume that the increase in the book value in 1884 of this land by $637,000 was entirely inflation in writing up—

The Master: He so stated.

A. You haven't the figure right.

Q. What is the figure?

A. $933,500.

The Master: There were two write-ups.

Mr. Ransom: In 1884.

The Master: The 1884 write-up was what?

The Witness: $637,500. 41655

Q. You assumed that that was entirely inflation in writing up?

A. Well, I don't know what you mean by inflation in writing up.

The Master: Appreciation.

The Witness: The land was written up according to Mr. Yalden's testimony, that amount.

The Master: Well, that is inflated value, isn't it?

The Witness: Yes, I would call it inflation.

The Master: That is what Mr. Ransom calls it. Why argue?

41656 Milo R. Maltbie, Cross.

Q. Did you not discover from the supplementary schedules in connection with the consolidation in 1884, that the New York Gas Light Company bought Block 951, Lot 35, Block 952, Lots 29, 33, 34 and 35, and also Block 978, part of Lot 5, between September 1, 1884, and November 11, 1884, that is, while the consolidation was being worked out?

A. I don't know anything about that. I have taken the figures shown in the Yalden report.

The Master: If that is the fact the Yalden report is all wrong, isn't that so?

41657 The Witness: I don't know. I would not want to pass on that without looking it over.

The Master: If that is the fact then there was no inflation or appreciation of land previously owned.

Mr. Ransom: If that is true this $300,500 in 1870 did not relate to the property to which he had assigned it, or only a negligible part of it.

Q. Now, you have taken into account the two instances shown on pages 710 and 711 of the New York Gas Light Company capital investment schedule that is shown in the Yalden report, you have discov-

41658 ered two instances which you say indicates the writing this real estate, and you have deducted those. Did you take into account the four instances where it appeared that this real estate had also been written down, and did you add those?

A. I did not find any instances where the real estate was written down.

The Master: Then look at 1846-47.

The Witness: Yes, how do you know but what that was a sale of real estate?

The Master: Well, how do you know?

The Witness: I do not, but Mr. Yalden un-

dertakes to state that the cost of that land is so much money.

The Master: Look from 1849 to 1850?

The Witness: Yes.

The Master: How do you know anything was sold?

The Witness: I looked at all these.

Q. You did not add these?

A. No.

The Master: You made no allowance for it?

The Witness: No.

The Master: How about 1839 to 1840? 41660

The Witness: Yes, I know there was a number of changes.

The Master: And 1844?

The Witness: Yes, and there are increases from 1838 to 1839?

The Master: How did you have the right to assume that those were sales any more than that the others were write-ups or write-downs?

The Witness: I did not. I took what Yalden reported.

Q. How do you know that these write-ups did not represent purchases the same as they did in 1884?

A. 1871 shows it was a write-up of an appreciation 41661
in real estate and not a purchase.

Q. Yalden, you think, says that?

A. Yes.

The Master: In other words, Yalden says that the difference between $366,500 in 1870, and $1,300,000 in 1871 was a write-up, you have assumed it?

The Witness: Yes, I based my conclusions on that statement.

The Master: Because you say Yalden says the difference between $1,320,000 in 1863, and

$1,957,000 in 1884, when it was turned over to the company, was a write-up, you have assumed it?

The Witness: I have accepted that as correct.

Q. Did you ever find out what became of this man Yalden?

A. I never investigated it except to find out whether he was alive or not.

Q. Did you find he was a fugitive from justice?

Mr. Chambers: I object to that. That is only hearsay of the wildest kind. He was a certified

41663 public accountant.

The Master: I am going to allow that question, and I am going to let Mr. Maltbie say whether he learned from any source that he was a fugitive from justice at any time after 1887 or 1886, when he gave his testimony.

A. That is the first intimation that I have ever heard of that sort.

Mr. O'Brien: The old motto, *de mortuis nil nisi bonum*—put that in the record as the sentiment of the defendants.

The Master: If Yalden was indicted, and if he was a fugitive from justice, we cannot speak good of the dead, but we will speak ill of the dead.

41664

Mr. O'Brien: How are we going to make this generation in which we live better if we don't show some regard for decency?

The Master: No, if a man is a fugitive from justice he carries with him the reputation he made.

Mr. O'Brien: But there is an orderly way to prove that. If the complainant's counsel feels that the responsibilities resting upon him require him to bring that into the record, there is a public record of it. If it is a matter of doubt it should

not be incorporated into any question. Your Honor found some fault with me when I brought a solitary fact and asked a witness so there would not be any doubt about it, to clear it up, in reference to the holdings of the Standard Oil of New Jersey. You called it vile, you expressed yourself pretty severely on that, and I stood and stand today on that record.

The Master: Yes, because that was not a public record.

Mr. O'Brien: It is all right. If we men of education are not going to make this world bet- 41666
ter, then we are not worthy of being Americans. If as we go along we cannot put into practice a few decent principles then we ought to go out of business, and not wrap the American flag around ourselves, claiming we are better than somebody else.

Mr. Chambers: Let me say on the record that I understand that Mr. Yalden was a certified public accountant in this state.

Mr. Ransom: I understand he was not at the time he did any of this work.

Mr. Chambers: I say he was a certified public accountant in this state at the time he died. 41667

The Master: I will not have any more of this. Go ahead, Judge Ransom, please.

Q. What cost did you assume for Block 1092—

Mr. O'Brien: Is he going ahead to prove that now?

The Master: He is going ahead to ask questions of Mr. Maltbie.

Q. What cost did you assume for Block 1092, Lot 7, Parcel A, and Block 1093, Lot 9, Parcel A, of the 44th Street station?

A. As of what date?

Q. At what figure did you put that property into your Exhibit XX-66?

A. $190,500.

The Master: How did you get that?

Q. Is that the amount that you say the property cost some predecessor company?

A. In part.

Q. Well, what part of it do you say represented cost to a predecessor company?

A. $182,500.

Q. And the remaining $8,000 represented cost to
41669 the Consolidated Gas Company from 1884 down?

A. Yes.

The Master: How much of it was that original cost?

The Witness: $182,500.

Q. Now, this $182,500 was the cost to what predecessor company?

A. Well, I have the Knickerbocker and Municipal Gas Light Companies combined. They were shown that way in the Valden report. I am unable to say to which one of those companies it belonged.

Q. You cannot say which one?

A. I cannot.

41670 Q. At what date was this $182,500 the cost of that land to some company?

The Master: To either or both of those companies.

Q. To either of those companies—it was not both.

A. I could not say when that land was acquired.

Q. You haven't any idea when it was acquired?

A. Not at this moment.

Q. You cannot assign that $182,500 to any particular year?

A. Not any particular year.

Q. Or years?

A. Do you want an answer to your question or do you withdraw it?

Q. If you can answer it in the course of the forenoon I would like to have it.

A. Just keep still a little while and I will answer it. No, I haven't anything in my notes to indicate even approximately when it acquired.

Q. Now, can you tell me any portion of the Yalden report or of Senate Document No. 47 from which you got the metes and bounds of the property to which you have assigned this value of this cost?

A. Only in the manner that I have utilized before, 41672
that Yalden shows the amount at which the property of these two companies was taken over on the books of the Consolidated Gas Company.

Q. What page?

A. Page 747 is one.

Q. Do you find any metes and bounds on page 747?

A. I do not.

Q. Do you find any descriptions anywhere?

A. If you would let me finish my answer.

Q. You are not answering the question I asked you. Have you found any metes and bounds of property anywhere in the Yalden report or Senate Docu- 41673
ment No. 47?

A. Yes.

Q. Where, with respect to this property?

A. Yes.

Q. All right, where?

A. Appendix H. That is part of the Rowland report.

Q. Where in the Yalden report do you find metes and bounds establishing the identity of this $182,500 cost, or the property that cost that sum, with the property described in the Rowland report?

41674 Milo R. Maltbie, Cross.

A. I don't find that in there.

Q. Now, is this an accurate statement of what you have done: You have put into this Exhibit AA-466, instead of the book cost of this property to the Consolidated Gas Company, what you infer from the Valden report was the book cost to some predecessor company? You took some predecessor company's real estate account.

Mr. Chambers: I object to that. I object to the form of the question, on the ground that it is not supported by any fact or anything that looks like fact.

41675

The Master: Objection overruled.

Mr. Chambers: That part of it which says that the Consolidated Company paid a certain amount for it. They put a certain amount on the books, but it was not the cost of the property.

The Master: Answer the question.

Mr. Chambers: Exception.

A. I made a general statement as to all this property that with one or two exceptions I did not take any figures out of the amount at which real estate was entered on the books of the Consolidated Gas Company.

Q. But you did take some amount which you say

41676 Valden said appeared on the books of some predecessor company, but you did not take and could not find what the property cost the predecessor company?

A. I think I got a very close approximation to it.

Q. No, you can't tell me, you can't tell now what the property cost the predecessor company?

Mr. O'Brien: Finish your answer.

The Master: Mr. O'Brien, you can't do that. Take your seat.

Mr. Chambers: He just suggested that the witness be allowed to finish his answer.

41677

The Master: I am going to get this fact after Judge Ransom does it in his own way.

Mr. O'Brien: Will the Master direct Judge Ransom not to break in on the answers of the witness?

The Master: I am instructing you to keep away from the witness and not to interrupt.

Mr. Chambers: I want to note on the record that Mr. O'Brien simply said to the witness, "Finish your answer."

The Master: Go ahead.

A. Accepting the accuracy of the Yalden report and 41678
the accuracy of Senate Document 47, I think I can.

The Master: Show me the Municipal books, where this real estate or any part of it is carried.

The Witness: Page 747 is one.

The Master: 747 says what?

The Witness: You see the summary there?

The Master: Summary of what, Municipal and Knickerbocker Companies?

The Witness: That is shown together. It does not show the two companies separately.

The Master: I want to make it perfectly clear on the record that there isn't any statement in 41679
Yalden's report anywhere or in any table, which shows how much the Municipal Company paid for any part of this property.

The Witness: I do not recall any place in Senate Document No. 47 where the cost of this property to the separate companies is shown.

The Master: In other words, there isn't anything in the Yalden report that shows when the Municipal Company bought any part of Blocks 1092 and 1093, or when the Knickerbocker Com-

pany bought any part of Blocks 1092 and 1093 what they paid for any particular part of it.

The Witness: Well, I would not say there wasn't anything here; I do not recall anything being here. I haven't anything in mind in this that indicates it.

Mr. Chambers: Yalden apparently had the books of the company.

The Master: Mr. Chambers, I don't want it.

Mr. Chambers: Don't you want to have me en-
41681 lighten you a little bit once in a while?

The Master: I don't want any statement at this time, I want to find what the witness knows about these books.

Mr. Chambers: Exception.

By the Master:

Q. Where does it appear on either page 746 or page 747, that any parts of Blocks 1092 or 1093 cost the two companies together a particular sum?

A. Do you see here $561,462.83?

Q. Yes.

A. That is the figure I used.

Q. That simply says to real estate?

41682 A. Yes.

Mr. Ransom: The Knickerbocker was at 99th Street, not 44th Street.

The Witness: Yes, the 99th Street plant.

Q. We are talking about 44th and 45th Street?

A. I took $561,462.83 as covering all the real estate of both these companies.

Q. Then what did you do?

A. I apportioned it.

Q. How?

A. On the basis of about—well, approximately the area of the land at 44th Street and 99th Street.

Q. On the basis of area?

A. Yes.

Q. Suppose they paid four times the proportionate area price for 99th Street, where do you land on your figures?

A. Well, the figure at 99th Street would be understated and the figure at 44th Street would be overstated.

Q. Suppose they paid four times as much at 44th Street as at 99th Street?

A. Then the figure at 44th Street would be understated and the figure at 99th Street would be over- 41684
stated. I have prepared a figure at the end to show what the amount would be increased if you took all of the portions that I have eliminated and eliminated a portion.

By Mr. Ransom:

Q. These figures for what is headed, "Municipal and Knickerbocker Gas Light Companies," on page 748, those in italics are plainly indicated on that page by a footnote to refer only to the Knickerbocker Company, are they not?

A. Yes, those relate to works, mains, services, meters, etc.

Q. Capital investment, real estate. The figure of 41685
$561,462.83 given opposite 1884 on page 748 is identical with this figure of $561,462.83 given on page 747?

A. Correct.

Q. And this figure, $561,462.83 for real estate given on page 748 is not in italics?

A. It is not.

Q. Then how did you reach the conclusion that the $561,462.83 includes the Knickerbocker plant at 99th Street and the Municipal plant at 44th Street?

A. I started to tell you that once and you inter-

rupted it. Now if you will let me go through it this time I will tell you.

The Master: Let him tell you. You called for his statement. Let him tell you.

A. On page 747 there is shown the amount at which the property of these two companies was taken over upon the books of the Consolidated Gas Company.

Q. Where does that so appear on page 747?

A. Under the heading, "Sold for."

Q. Page 747 is simply headed, "Summary"?

A. Yes, and that is an italicised heading under
41687 the main heading on page 746, "D. Municipal and Knickerbocker Gas Light Companies."

The Master: Don't interrupt while Mr. Maltbie makes his statement. You can cross-examine him after that.

A. (Continued.) In the column preceding "Sold for" is an amount called "Appreciation Written up." In the column preceding that is the heading, "State of Acc't Prior to Credit of Appreciation." Consequently, or at least I think it is a fair inference from that, if Vadden's statement and testimony are correct, the amounts in the first column relate to the same property as given in the last column, and if that
41688 is true, $561,462.83 refers to property transferred to the Consolidated Gas Company and taken up on the books of that company at $1,084,000, with this possible point open to question, and that is whether the $561,462.83 includes the amount for bulkhead, piers and water rights.

Q. Do you know whether it does or not?

A. I do not know.

Q. How do you account for the fact that the sum of $561,462.83 under the heading of "Capital Investments" appears on page 748 for real estate of Municipal Company alone?

A. I do not admit that that is the fact. The record will show for itself.

Q. You know that Yalden testified that he never had the Knickerbocker books, do you not?

A. I am not so sure about that, as to what books and records he got from the Knickerbocker.

The Master: I think that has been conceded all the way through.

The Witness: Well, he made two reports.

The Master: I thought all counsel have agreed that Yalden did not have the Knickerbocker books.

Mr. Chambers: That sounds familiar some- 41690
where. Mr. Carter said something about the Knickerbocker books.

The Master: I got the impression that everybody agreed that the Knickerbocker books were not in existence at that time and were not available.

Mr. Clark: I know there were some that were not.

Mr. Chambers: I am very sure it was the Knickerbocker books.

The Master: You understand if we have these books we could get at this.

Mr. Ransom: Even poor old Yalden didn't 41691
have them.

Mr. Chambers: We didn't do away with the books.

Mr. Ransom: Perhaps Yalden did.

Mr. Chambers: He had books of the other companies.

The Witness: He had access to some books of the Knickerbocker Company.

Mr. Chambers: Yes, he did, I remember that.

Mr. Ransom: Octogenarian Chambers now remembers.

The Witness: At page 647 he makes a statement of the Knickerbocker Company's outlay for mains, meters, etc.

Mr. Ransom: Heaven knows where he got it.

Mr. Chambers: If you had kept the books—it is not our fault that they are gone. You had all the books except of that one company at least, and you should have preserved them. You can't criticise now because we use secondary evidence of the contents of the books.

The Witness: Valden made two reports, one
41693 in the first part of 1885 and one at the end of 1885.

Mr. Chambers: We tried to offer in evidence the report of Marwick & Mitchell.

The Master: Yes, and I ruled it out.

Mr. Chambers: Yes, you did, and I don't agree with you.

The Master: Why don't you get somebody connected with Marwick, Mitchell, Peat & Company who is alive, and get it in?

Mr. Chambers: I did, I called Mr. Edgerton.

Mr. O'Brien: I would like to have that clear. We assumed at the time that you made your ruling
41694 that you ruled it out because of its immateriality.

Mr. Chambers: Yes, that is what I thought, regardless of whom I brought here.

The Master: Whatever my ruling was on that, it will stand. I have ruled it out.

Mr. Chambers: Yes, you ruled it out, no matter whom I brought.

The Master: If that is the case it will stay out. Look at the record, and if I ruled it out on that ground don't waste any more time on it.

Q. Dr. Maltbie, what did you assume was the area of 44th Street, of all the land there, at the time you gave this $182,500 value of it?

A. Well, there is some question as to the accuracy of the—

The Master: No, what area did you assume? You have your figures there.

The Witness: I said a moment ago I took it about one-third, but there is some question—

The Master: One-third of what?

The Witness: Of the total that was there before. 41696

The Master: What was the total area?

The Witness: I did not know that exactly. It can be obtained from the real estate part of the Rowland appraisals.

Q. As of the date when you assigned this $561,462.83, what land was there at 44th Street that belonged to the Municipal Company? Can you give us the area?

A. No, I haven't got the square feet, if that is what you mean.

Q. Can you describe it by metes and bounds?

A. Well, I can describe it by blocks.

Q. By the present tax maps, you mean? 41697

A. Well, approximately so.

Q. Can you describe it in some way from the Rowland report? How from the Rowland report—that is, where in the Rowland report do you find anything which establishes the identity of the land at that time, at the time of the $561,462.83 cost with any tax map, lots and blocks?

A. Why, I have stated that so frequently, and I state it again, that throughout this work, in view of the parallel columns and the statement made by Yalden as to the cost of the land that was taken over by the

Consolidated Gas Company in 1884 I have assumed that the land for which he gave the figure was the cost figure on the books of the constituent company of the land taken over by the Consolidated Gas Company.

Q. For what square feet of area did you find this $561,462.83 was the book cost to a predecessor company?

A. In that way, it was the cost of the 99th Street plant and the 44th Street plant—

Q. You are looking now at your Exhibit AA 126, 41680 and are assuming the identity with the dimensions of the present 59th Street plant?

A. I am not looking at the 99th Street plant.

Q. Or identity with the present dimensions of the 44th Street plant?

A. Yes, sir, the so-called Rowland dimensions are practically the same as the dimensions that I am looking at, except in the one thing, on the water side there is a question as to how far the water rights extend into the river.

Q. Do you know anything about at 44th Street how much of the land as it was from 1884 down, as it stood subsequently, represented reclaimed land?

41700 A. Nothing except so far as shown in the real estate part of the so-called Rowland report.

Q. Did you read this statement from page 906, Senate Document 47, from the Rowland report as to this property—

A. Well, there is just one thing more. One or two of those figures, apparently, are either transposed or in error, and I think a reference is made to that. I think it is in the testimony in Senate Document No. 47. I have seen a reference to it somewhere.

Q. Did you read this statement: "When this property was used for saw mill purposes and at the time it

was taken for its present use the tide ebbed and flowed up to a point now occupied by the eastern wall of the gasogene house. The excavation from the tanks, etc., served in a measure to fill up to the present western line of the property, but not entirely, so that a large sum has been expended upon the property to bring it to its present condition so far as relates to grade, and a proper amount to represent the material and labor will be, say, $10,000."

A. I think I read that testimony.

Q. That indicates, does it not, that at the time the Municipal Company bought it the land was largely 41702
under water?

A. I know it indicates that some part of it was under water, a considerable part of it was under water; there was an appreciable part of it under water in 1884.

Q. Did you know or did you ascertain where the gasogene house was?

A. I did not.

Q. You did not investigate that?

A. I did not.

The Master: What is the gasogene house?

Mr. Ransom: That is the old name for a gas generator.

The Witness: The way I happened to remem- 41703
ber reading that testimony was by that name.

Q. What cost did you assume for Block 1457, Lot 6, Parcel 1, at the East 63rd Street station, that is, at what cost figure, whatever you call it did you put that property into the 1918 rate base, as you call it?

A. 109,809.

Q. What cost to a predecessor company did you assume?

The Master: That goes back to my inquiry, "How did you get it?"

Mr. Ransom: I would rather develop it in my own way.

The Master: I think you will get it quicker the other way.

Mr. Ransom: Counsel cannot always do things as expeditiously as you would.

A. That is made up of three items, $104,800, which I will explain further, as to how I got it, in a minute. $4,553 representing assessments—

Q. Assessments prior to or subsequent to 1884?

A. Subsequent to 1884. Also, $456 of assessments
41705 since 1884.

Q. So, the cost to some predecessor company you have taken as $104,800?

A. That is right.

Q. What company, the Metropolitan Gas Light Company?

A. Correct.

Q. Now, what year was this property acquired by the Metropolitan Gas Light Company for this sum?

A. I don't think I found out the date on which it was acquired. Just a moment.

Q. Wasn't it 1860, February 1st?

The Master. What page?

41706 Mr. Ransom: Page 728.

A. It does not say it was February 1, 1860. It says from February 1, 1860, to November 10, 1884.

Q. Well, that or some prior date?

A. It was some date prior to 1884.

Q. Do you know to whom the Metropolitan Gas Light Company paid $104,800 for that property?

A. I am not positive, I think that is the property they bought from another gas company, but I am not positive about it I may be mistaken on that.

Q. You certainly do not want to swear to that?

A. No, I do not; it is very indefinite.

Q. I think you are in error on that?

A. That may be, I am not positive.

Q. You derived from somewhere this $104,800 from the Yalden report?

A. Yes.

Q. Where, in the Yalden report did you find metes and bounds showing the identity of Block 1457, Lot 6, Parcel 1, with this property to which you assigned or assumed a cost of $104,800?

A. On some of these parcels I went back to the old books and records, but I won't be sure whether I did that in this case or not. I prefer to make a positive 41708
statement that I followed the same plan in this case that I stated I followed in other cases.

By the Master:

Q. Where did you find the $104,000?

A. Oh, well, I assume he was asking about the figures from which I derived $104,000.

Q. He was; he was asking as to the identity of the property.

A. Yes.

Q. Where you got the $104,000.

By Mr. Ransom:

Q. How do you know this Block 1457, Lot 6, Parcel 1, was the property for which you worked out in 41709
some way a cost of $104,800 to the Metropolitan Gas Light Company in 1860 or thereabouts?

A. Well, I think I have stated that so many times that—it is the same plan that I followed in the other case.

Q. Well, did you assume that the 62nd Street property, as the Yalden Report calls it, was this property?

A. The 62nd Street Works, as he calls it.

Q. Yes?

A. Was this property, and some more.

Q. How did you work out this figure of $104,800?

41710 Milo R. Maltbie, Cross.

A. All right. Upon pages 728, 731 and 732 there are figures for the 62nd Street Works, which show, upon page 731, a total of $242,060.49, which includes what is called in the first column, Purchase of Property, Taxes, Legal Expenses, and Interest. I took all those figures. Then upon page 732 there is shown a deduction in arriving at the total, of $3,985 for Rent, Rents Received. I deducted that amount, and took the two hundred—

Q. Now, just a moment. Why did you deduct the rent from the cost of the land?

41711 A. Because that is the figure which Rowland shows at the end, as you follow back his figures; $242,060 less this amount, or $238,075.49.

Q. Now, be fair; you don't mean Rowland.

A. No, Yalden; as the cost of the property.

Q. $242,060.49?

A. No, I said that less the rent.

By the Master:

Q. Yes, but the cost was $242,060.49, less the $3,985, which he says is a debit balance, being the net amount invested, $238,075.49.

A. Now, look at page 728, your Honor.

Q. Yes, I saw that.

41712 A. Where it says, Balance, being net cost of property as now shown on books.

Q. Yes, but it shows on books that it cost $242,060.49, made up of four items, $242,000 for purchase, taxes and assessments, legal expenses and interest.

A. Yes.

Q. On the other side he assumes you deduct the interest.

A. The rent.

Q. The rent, leaving the net investment; but the

purchase price or cost of the property was $242,060.49, without deducting the rent deduction.

A. Well, of course I don't know what the rents were, but if rents were received on that property during construction or before they completed construction, why, it was a legitimate credit against the cost of the property.

By Mr. Ransom:

Q. And you thought you would give the company the benefit of the doubt and deduct it?

A. He deducted it, and the cost, being the net cost of the property at the end, I took it. 41714

By the Master:

Q. Now, come on; how did you get at that $104,000? You took that $238,075.49, I suppose?

A. Yes. Now, that property, or the property of which we are now speaking—

Mr. Ransom: 62nd Street?

The Witness: Yes, that is the—

Q. The 62nd Street Works?

A. The 1457, Lot 6, was a part of the parcel and was somewhat less than one-half of the entire amount, so I figured out these lots at $6,000 a lot, which is approximately one-half the amount of the total, notwithstanding the fact that they are interior lots, and 41715
took $115,800 for the total of Parcels 1 and 2, and then deducted the two lots which were not used throughout the entire period.

Q. Which you say were not used?

A. Well, the testimony of the company's—

Q. Well, which you claim were not used?

A. Well, the company says it was not used.

Mr. Chambers: The company says so.

Q. I do not want you to say what the company says; what you claim was not used.

A. That is correct; and that leaves $104,800.

41716 Milo R. Maltbie, Cross.

Q. You mean by that that you took the property described in the Rowland appraisal, so-called, on pages 848 and 849, describing eight lots fronting Avenue A on the west side between 62nd and 63rd Streets, 13 1/4 lots on the south side of 63rd Street—

A. Will you give me the page so I can follow it?

Q. Pages 848 and 849; and 15 1/4 lots on the north side of 62nd Street, and assumed those to be the 62nd Street works referred to in the Yalden report?

A. I think that is correct. You said the 8 lots fronting Avenue A?

41717 Q. Yes.

A. 13 1/4 lots—

Q. On the south side of 63rd Street, and 15 1/4 lots on the north side of 62nd Street, that his estimate assumed were the 62nd Street works referred to in the Yalden report at page 728?

A. That is correct.

By Mr. Ransom:

Q. Well, let us see about that. I call your attention to page 730, the figures given for capital investment, real estate, Avenue A.

A. That is separate property.

Q. How do you know that? How can you say

41718 they do not relate—

Mr. Chambers: Now, just a minute. One question at a time.

The Master: Now, Mr. Chambers, I am presiding.

Mr. Chambers: If the Court please.

The Witness: What was the page you referred to?

Mr. Ransom: 848 and 849, when Mr. Chambers interrupted.

Mr. Chambers: You interrupted.

Mr. O'Brien: You interrupted.

Mr. Chambers: You asked him a question; if the Court please, he asked him a question and then he interrupted him.

Mr. Ransom: I was going to call the witness's attention to the thing which he now is asking me to find for him, namely the entries on pages 848 and 849, which show that these Avenue A lots were part of this 62nd Street works. They are set out on pages 848 and 849.

The Witness: Now, what is the question?

Q. How do you know that these properties on account of Avenue A, as it is called, on page 730, do not 41720
relate to Block 1457, in view of what appears on pages 848 and 849 of the Rowland schedule to which you have referred?

A. On page 848 there is shown separate property, which is identified by the number of lots and the streets and the corners.

Q. That is, East 62nd Street and East 63rd Street?

A. No, sir, East 60th and 61st Streets.

Q. Yes.

A. And that is separate and apart from the parcels to which the Master referred; and the cost upon pages 728 and 730 is shown separately.

Q. Well, how do you know— 41721

A. (Interposing.) And they are referred to, throughout the Yalden report here, separately, the Avenue A property being separated from the 62nd Street works.

Q. Well, how do you know, I ask you again, that these Avenue A investments, real estate, shown on page 730 and shown also on page 848 of the Rowland appraisal, do not relate to Block 1457?

A. I have stated it once.

Mr. Chambers: He has given it.

The Master: In this connection it is interest-

ing to note that at page 848 reference is made to the fact that Avenue A, which is two blocks west of Avenue C, and 60th Street, was partly under water; so that the East River apparently ran as far west as that at that time.

Q. Well, you have nothing to add on that?

A. No.

Q. Now, is it not a fact that the 62nd Street works property comprised not only Block 1457, Lot 6, but also Block 1454, Lot 13, and Block 1474, Lot 24?

The Witness: Let me hear that again?

41723 (The question was read by the stenographer.)

Q. At that time?

A. At what time?

The Master: 1884.

Q. Well, at this time covered on page 730, as February 1, 1860, to November 10, 1884.

A. Now, Mr. Stenographer, will you give me those lots?

(The question was read.)

A. Well, I don't know to what Lot 24 of Block 1474 refers. According to investigation I had made of the property, the five lots first named under C on page 848 referred to some lots in Block 1474, and

41724 therefore a part of the Avenue A property.

Mr. Ransom: Nothing of that sort appears in this report.

The Witness: Just let me finish. I have no reference to Block 1454, Lot 13, but if more property was included than I have assumed in the total amount of $238,000, the cost of Lot 6, Block 1457, would be reduced.

Q. Well, you don't know whether it was or not?

The Master: He said so, Judge.

A. I have nothing to indicate that it was included.

Q. Or that it was excluded?

The Master: I can see, from looking at the Valden Report, that it is pretty uncertain as to just what was figured in, when you look into the Rowland situation.

Mr. Ransom: Evidence was never submitted on a slighter basis.

Q. What cost did you assume for Block 1157, Lot 1, the westerly 500 feet, and Block 1177, Lot 21, at the West 65th Street station?

The Master: Are they included in one figure?

The Witness: Yes, I have them in one figure. 41726

Mr. Ransom: Yes, sir, they are bunched up.

A. Well, those two parcels of land are included at the end of 1918 at $156,180.

Q. Well, now, how much of that represents assessments and other capital additions by the Consolidated from 1884 down?

A. $29,180.

Q. So that $127,000 represents the cost to some predecessor company?

A. That is correct.

Q. What predecessor company, the Manhattan Gas Light Co.?

A. Metropolitan.

41727

Q. From whom did the Consolidated Company acquire this property?

Mr. Chambers: I object on the ground that it is already in evidence by the deed of the—

The Master: Overruled.

Mr. Chambers: Exception.

A. The Metropolitan Company.

Q. From whom did the Metropolitan acquire it?

A. I don't know.

Q. Was it not from the Manhattan Gas Light Company?

41728 Milo R. Maltbie, Cross.

A. I could not say. There was some property transferred between these companies, but I—

Q. You did not find out?

A. I did not go back to take those figures at which those original companies bought them.

Q. You could not find it, could you, from the Valden Report?

A. I do not think so, but I did not try to.

Q. Well, at what date did the Metropolitan pay $127,000 for this property?

A. Well, of course, you won't find the item
41729 $127,000, because it took part of the block there, and you have to apportion it.

Q. Well, at what date did they pay the larger sum for this property?

A. I will see if I can find it in my notes (examining papers). Well, as in the other case, the only dates that I now see are the dates given upon page 728 of Senate Document No. 47, where it says February 1, 1860, to November 10, 1884.

Q. Well, then, it was February 1, 1860, or before, that the Metropolitan acquired it?

A. I should not say that. I should say it was between February 1, 1860, and November 10, 1884.

41730 Q. But you cannot tell when?

A. No, not beyond that.

Q. Now, Valden, on page 728, gives the net cost of this land upon the purchase by the Metropolitan as $323,000, plus assessments $41,080.31, and $41,660.07 of taxes and $3,360.90 of legal expenses, and surveying, does he not?

A. Yes.

The Master: That is, not of this property, but of—

The Witness: 65th Street Works, as it is called.

The Master: Of certain property?

Mr. Ransom: Of the 65th Street Works.

The Master: Yes.

Q. Now, do you find anywhere in the Yalden Report dimensions, metes and bounds, for the 65th Street Works property, as it is called, referred to on page 728, and with which you have identified this $127,000 figure?

A. I make the same answer to it that I have made to that same question relating to other property.

Q. That is, you don't know?

A. No, I did not say that. 41732

Q. Well, what do you say? That is the way I understood your previous answer.

Mr. Chambers: You did not understand it aright.

A. In the Yalden Report, throughout, not only in this case but in these other—

Q. Well, confine your answer to this case.

A. I would like to cover it, to save time, all in one.

Mr. Ransom: I object.

The Master: You will not save time.

Q. Find your dimensions, your metes and bounds, that identify this 65th Street Works property with 41733
this Block 1157, Lot 1, and Block 1177, Lot 21.

The Master: What was the property the Consolidated took, that is described in the Rowland Report?

Mr. Ransom: Well, the property acquired by the Metropolitan from somebody between 1860 and 1884, that is what we are interested in

The Master: But Mr. Maltbie has said a dozen times and will repeat now, that what he did was to look at the Rowland figures, the description there, take out what he figured was the 65th

Street property, and assumed that was the 65th Street property referred to by Yalden. Now, that is what he has done.

Mr. Ransom: He assumed.

The Witness: That is correct.

Mr. Ransom: That is, he has assumed that the property acquired through the Rowland schedules was identical with what had cost some $127,000 in some earlier year.

The Witness: Yes, because of Yalden's paralleling and attempting to state, as he did in his
41735 testimony and his report, what that property stood on the books of the companies merged into the Consolidated Gas Company.

Mr. Ransom: In most instances we have called attention to so far that appears to be in doubt

The Master: That is not the point. The point is that you have been trying to put on the record what Mr. Maltbie did, and it is perfectly clear what he did. He took the Rowland description of the property, for instance he took certain lots—let us see that Rowland situation, let us see Rowland's West 65th Street.

The Witness: Page 849, your Honor.

41736 The Master: It is perfectly clear what he did. He took here the lots which were described as being on 65th Street, on page 849—65th and 66th Streets, I guess, was it not?

The Witness: Yes, going through.

The Master: Totalling $320,000, and he—

The Witness: Just a moment now; I don't want you to be mislead. And on page 850, 8 lots and 17.75; those two.

The Master: Well, he took those lots as being on 65th and 66th Streets, in the so-called Rowland appraisal on pages 849 and 850, and identi-

fied them as the 65th Street works that were carried on the books of the Metropolitan.

Mr. Ransom: Well, he did not know that; he assumed them to be.

The Master: He assumed to identify them; he took them. That is all you can get.

By Mr. Ransom:

Q. Well now, how do you get this $127,000 figure, representing cost to the Metropolitan Gas Light Company at some unidentified time?

A. I took the figures given upon page 728, and also upon page 731— 41738

Q. Now, just which figures?

A. Oh, they are the same.

The Master: Of how much?

The Witness: Well, I was going to give the items that go to make it up.

Q. Well, give the items.

A. Purchase of property, street assessments, taxes, legal expenses, surveying, etc., I added those together and got $409,041.28.

The Master: Which figure you applied to all of the lots described?

The Witness: No, there is one thing more.

Mr. Ransom: Oh, no, he did not do anything as simple as that. 41739

A. (Continued.) On page 728 and page 731 there is shown sales of the property for $225,000; there is shown—

Q. Just a moment. It says "By receipts from sales." It does not say sales of property.

A. No, it does not say sales of property, but what would you sell?

The Master: All right, let us have Mr. Maltbie's statement as to how he figured the $127,000. You can ask him any further questions you like.

Mr. Ransom: We do not want to assume that he means to read it wrongly, and I thought we would call his attention to it and then we will have the record straight.

The Master: No, let him finish his answer, and then you can point out anything you want to point out.

The Witness: Plus the sales of old materials, which Rowland has deducted in determining the debtor balance.

Q. You mean Rowland?

41741 A. Yalden.

Q. Don't be so unfair as that.

A. Oh, I beg your pardon. Now it was just a slip of the tongue, and you know it.

Q. Well, you have made it before.

A. Well, I will probably make it again.

Mr. Ransom: No doubt.

The Master: Come on, Mr. Maltbie; sales of materials that Yalden deducted.

The Witness: Which he did in arriving at his debtor balance, being net amount invested, which gave me $180,838.95.

Q. Did you not deduct the receipts from wharfage?

41742 A. Well, probably I did. I am not sure, as I have not the total subdivided here. I may have done that. It is $422.33. If you check the figures, perhaps I did.

Q. Yes, I am following you, what figure of total deductions does that give you?

A. $228,202.33

By the Master:

Q. That is for sale of property and sale of materials?

A. Yes.

Mr. Ransom: Wharfage?

Q. And wharfage?

A. And that wharfage received a small item.

Mr. Ransom: Well, now, let us read that entry, shall we not? Page 728—

The Master: Wait until he gets through.

Mr. Ransom (continuing): "Balance, being net cost of property as now shown on books."

The Master: Wait until he gets through with his answer. I want to know how he got $127,000.

The Witness: Then I deducted approximately thirty per cent—I rounded off the figures—for 41744
the 300 feet of Block 1157 which is not included, as we have stated, in the used and useful property. $54,000 leaves $126,000, about $127,000. The thirty per cent deduction was made principally upon the basis that the real estate appraisal in the so-called Rowland Report shows that the east 300 feet would be about thirty per cent of the value of that property.

By Mr. Ransom:

Q. Now, what was the sum, then, that you took for the whole block and divided up on this 70 and 30 ratio?

A. I took $180,838.95. 41745

Q. As representing the cost to the predecessor company of the whole block?

A. Of the whole two blocks.

Q. Of the whole two blocks?

A. Well, one block and part of another block, which is irregularly shaped.

Q. Well, you took as the cost of the whole thing that Yalden referred to on page 720 as the 65th Street Works, what?

A. $180,838.95.

Q. Well, now, on page 728, on the credit side, Yalden says, after reciting those various receipts from sales, rents, wharfage, sale of old materials, he says, "Balance, being net cost of property as now shown on books, $589,724.95," does he not?

A. He does, in which there is included an "appreciation written up" of $526,259.54.

Q. Where do you get that "appreciation written up"?

A. Just on the other side of—

Q. That is all you have to support it?

41747 A. I don't know as to that, but that is where I got it for the moment. There may be other statements in here in relation thereto; I presume there are. There is usually in his text some further explanation.

Q. Well, is the situation in this instance of "appreciation written up" and your deduction of it, the same as that which we previously discussed in connection with the earlier parcel?

A. What earlier parcel?

The Master: 21st Street.

Q. 21st Street?

The Master: That was written up, as you said,

41748 and you deducted the appreciation.

The Witness: Yes, it is a similar item.

Q. You did not credit any writing down of the property?

A. I did not find any writing down of the property, of the land.

Q. You did not look to see?

A. I looked this whole thing through.

Q. Well, have you not got anything else to support this deduction, which you make of $526,259.54 from the sum which Yalden says represents the net cost of the property as now shown by the books?

Have you anything to support it, except that phrase on page 728?

A. Well, on pages 722 and 723 there are items shown for appreciation written up. It is not separate there, but—

Q. Is there anything to show that that is land? A. Not absolutely land.

Q. Well, not at all. Pages 722 and 723 are called an analysis of profit and loss account.

A. Yes, that is the way they—that is the account in which they would ordinarily include the writing up. It is a contra item. 41750

Q. And the sum headings of this page are total cost of gas, bad accounts and sundry expenses, depreciation written off, dividends, gross income from gas residuals and sundries, and the last column the one to which you have referred, appreciation written up?

A. Yes, and you note the total of the depreciation written off?

Q. Nothing to indicate that either refers to land, is there?

A. Nothing to indicate that the depreciation written off refers to land, amounting to $4,762.44.

Q. Well, we will come to that in a moment. In 41751
that connection the figures shown in this analysis of profit and loss account, on pages 722 and 723, for appreciation written off, as it is there called, in this analysis of profit and loss account, is not the sum which you have deducted from Yalden's net book cost of the property, is it?

A. Not alone. There is some more appreciation written up on other parcels, which you have to add in to get the total.

Q. You cannot find the sum which you have deducted from Yalden's net book cost in this analysis

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of profit and loss account on pages 722 and 723, can you?

A. Well, there are other items which added together will go to make that up, I believe.

Q. Well, you have not done it?

A. Well, I have not—I think I did it at one time. It is shown again on page 725, the summary, and I think I did check those items. I won't be positive about it.

Q. Well, now, you said that you did not find any instances where real estate of this company had been
41753 written down, as well as instances of being written up which you have deducted. I call your attention to pages 733 and 734. Did your investigation of this Yalden report lead you to go so far as to examine those pages?

A. It did.

Q. Well, there you find repeated instances of this real estate having been written down by the Metropolitan Gas Light Company?

A. I do not.

Q. Well, I find seven, how many do you find?

A. I don't find any.

Q. Well, I call your attention to page 733; from
41754 1879 to 1871 is one.

A. That does not say there is a writing down.

Mr. Chambers: I object to that. Just listen to that.

Q. Well, it shows a reduction in amount, does it not?

Mr. Chambers: Now, just a minute. Counsel says, "I find seven, how many do you find." He is not under oath, he is not a witness. I might cross-examine him. He says to Mr. Maltbie, "How many do you find there written down," Mr. Maltbie says, "Not any." Mr.

Maltbie is under oath. Ransom says, "I find seven, how many do you find?" Mr. Maltbie says, "Not any." Ransom says, "Now, the first one I find is so and so."

Mr. O'Brien: It is ragged practice.

Mr. Chambers: Now, I think it is demonstrated pretty clearly here that Mr. Ransom is not capable, even if not under oath, of stating the correct situation. I object to his testifying.

The Master: Which statement shall I take, the one under oath or the one made by coun- 41756
sel?

Mr. Chambers: If he wants to testify I will put him under cross-examination.

The Master: Which statement do you want me to take, the one under oath or the one in the record?

Mr. Chambers: The one under oath.

The Master: Then what are you worrying about? That is what I will take.

Mr Chambers: Is it not a waste of time?

Mr. O'Brien: It is like his bluff on the candle power mistakes.

Mr. Ransom: You check them up. On 41757
page 733—

Mr. O'Brien: I will do more than that before I get through, Mr. Ransom. I will check you up. Don't worry about that, boy.

By Mr. Ransom:

Q When this torrent of billingsgate started, Mr. Maltbie, I was calling your attention to—

By the Master:

Q. Are there seven instances, Mr. Maltbie, on that schedule, of the real estate item being less in one period than it was before?

Mr. Ransom: I have now found another one.

Mr. Chambers: More testimony. I object to that.

Q. How many do you find, Mr. Maltbie?

A. Well, I have got eight or nine; I want to check that up.

Q. Between what years? That is near enough. Between what years? I mean, beginning—

A. Beginning?

Q. Over what years is that schedule?

A. 1860 to 1884.

41759 Q. Between 1860 and 1884?

Mr. Ransom: The first one is in 1864.

Q. The statement shows that the real estate was carried at a lesser figure eight or nine times than a previous year, is that correct?

A. Yes, I think I did not make a mistake.

Q. Well that is near enough. Now, Mr. Ransom intimates by his inquiry that means writing off of value or cost? You say it does not carry that to your mind?

A. No, not of land.

The Master: All right.

Mr. Chambers: You see, there may be some sold.

41760 The Witness: Not of land. I want to call your Honor's attention—

Q. How about the appreciation items; do they necessarily refer to land?

Mr. Ransom: It may be new land purchased.

A. Not necessarily, no.

Q. It might be buildings?

A. No, what I meant to say was—

Mr. Ransom: It might be more land purchased.

The Witness: Yes, it might be more land pur-

chased, yes. The mere fact of an increase or decrease, to my mind, in a statement like that, would not indicate an appreciation nor a depreciation, a writing up or writing off.

Q. But when Mr. Yalden says it is appreciation you take his word for it?

A. Yes.

The Master: Now, what more can you get?

The Witness: I want to call your Honor's attention to the fact, too, on pages 731 and 732, there are a lot of debit items and credit items going through. Now, if all of those were debited and credited to the real estate account, the real estate account would fluctuate just exactly as—well, I won't say just exactly, but it would fluctuate up and down from year to year as the debits were made and then the credits that he has noted here were made. There are not many instances, I may say this, there are not many instances where the difference between the preceding year and a following year is large; they are practically all small. 41762

The Master: Well, it is in evidence. I will look at it.

By Mr. Ransom:

Q. Although you assign to this plot of land a cost in 1860 to 1884, at some unidentified date, of only $127,000, did you not learn from Yalden's testimony on page 375, that according to Yalden, the cutting through of the New York Central Railroad had occasioned a depreciation to this property of $598,700.86? 41763

Mr. Chambers: Just a minute. I object to that question on the ground that it is prefaced by a statement which is contrary to the facts.

The Master: I will allow the question.

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Mr. Chambers: A rambling statement at the beginning.

The Master: The objection is overruled.

Mr. Chambers: Exception.

A. Yes, I read the testimony on page 375.

Q. Why didn't you—

Mr. Chambers: Just a minute. Mr. Maltbie has not answered the long rambling question.

Mr. Ransom: He has answered it completely.

The Master: He said yes, he had read that testimony.

41765 Mr. Ransom: The only concise answer so far given.

The Master: Now, Judge, proceed.

Mr. Chambers: Well, you got a concise answer yesterday afternoon; at least, I called it pretty concise, and quite accurate.

Mr. Ransom: Too bad the Attorney General is not represented by a lawyer, instead of a fishwife.

Mr. Chambers: You got it right back.

Q. Why didn't you take the cost to the Manhattan Company instead of to the Metropolitan Company?

41766 A. Of this land?

Q. Yalden gave the cost to the Manhattan Company in his testimony at page 677 at $105,000.

A. Well, but I took all through the cost to the constituent companies as shown by him at the time of the consolidation.

Q. To the immediate predecessor company?

A. Yes, sir.

Q. Not the price paid for the property, even according to Yalden, when it was first acquired for gas purposes?

A. No.

Q. In making this apportionment on Block 1157, between these two parcels, one of which you say you excluded, what weight did you give the differences in the factors of real estate values, which result from differences of areas and location of different portions of a single plot?

A. Well, the parcel excluded from these two blocks is the easterly 300 feet of the easterly block. Let me confirm my recollection on that (referring to papers). Yes. And as I have already stated, the value of the total as shown in the so-called Rowland Appraisal was about thirty per cent, and I took 41768
off thirty per cent for that easterly 300 feet.

Q. Do you mean Rowland's now or Yalden's?

A. I mean what I said.

Q. How much in area did the railroad take off of the property for which the predecessor company paid, according to your calculation, $127,000?

A. I cannot answer that question?

Q. You have no idea?

A. I cannot answer that question.

By the Master:

Q. Well, have you any idea?

A. I do not know what he means.

Q. On page 375 Mr. Yalden says that the New 41769
York Central Railroad took off some property from the Manhattan Company?

Mr. Ransom: The Metropolitan Company.

Q. (Continuing.) Or the Metropolitan Company, either one.

Mr. Ransom: 65th Street property.

Q. (Continuing.) 65th Street property, and Mr. Ransom wants to know if you know how much property was taken?

A. That I can answer.

Q. Yes, how much?

A. I don't know.

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By Mr. Ransom:

Q. Now, does it not appear from page 361 of the Senate Document No. 47, that the Metropolitan Company bought this land from the Manhattan Company and paid for it in stock of a par value of $1,178,000, and with a purchase money mortgage for $161,500?

A. Well, I should have to read that.

The Master: Well, read it. It only takes a minute. I have read it while Judge Ransom was talking: page 361, the first paragraph.

The Witness: It says here they sold their
41771 real estate and station at 65th Street, together with the mains, services and meters used above the center of 34th Street, for the sum of $685,301.02, receiving a mortgage of $161,500 and stock in said Metropolitan Company of 2,350 shares of the par value of $1,178,000. That was for a lot of property besides this land.

The Master: It speaks for itself.

Q. Do you know how much that was for land?

A. No, I do not.

Q. You did not investigate to ascertain?

A. No, I do not think I did.

The Master: Well, you could not, could you?

The Witness: I do not believe you could.

41772 Q. Now, what cost did you assume for Block 1670, Lot 1, and Block 1692, Lot 1, as to the 99th Street station?

A. As of the end of 1918, $244,789.

Q. Well, now, that is as of the end of December, 1918?

A. Right.

Q. What did you assume was the cost to some predecessor company prior to 1884?

A. Why, that item is made up of $190,000 for the original cost to the predecessor company and $18,578

of assessments shown in Table 117 and $36,211 shown in Tables 47 and 116, which the company paid to the City to acquire title, to settle the claims of the City.

By the Master:

Q. The answer is $190,000 is what you figured for predecessor company cost?

A. Yes.

Q. That was the question. What company was that?

Mr. Ransom: The Knickerbocker Gas Light Company? 41774

A. Well, that was prior to the Knickerbocker and Municipal. As I stated before, I haven't it separate for those two companies; they are lumped together.

Q. Well, that $190,000 was part of that larger figure which you gave of $561,000?

A. Part of $561,000, correct.

Q. Which included 21st Street?

A. No, 44th Street.

Q. 44th Street?

A. Right.

Q. And the testimony you gave with reference to 44th Street applies to 99th Street?

A. That is correct. 41775

Mr. Chambers: Correct.

The Witness: You remember, I said that by increased—

The Master: I do not see the necessity of going over all those figures again, and all that information, unless there is something special.

Mr. Ransom: Well, it appears from page 283 of Yalden's testimony that he did not have the Knickerbocker book.

The Master: Well, that is in evidence. That was my understanding of it all the time.

Mr. Chambers: Well, there is something more to be said on that.

By the Master:

Q. Have you got that page, Mr. Maltbie, before you, 283?

A. Yes.

Q. What does he say there?

A. I have read the page over twice, and I do not see that he says he did not have the Knickerbocker book.

The Master: There may be a mistake in the
41777 page number. I know he says it somewhere.

By Mr. Ransom:

Q. Well, now, did you not read, with respect to this Municipal Company-Knickerbocker situation, Dr. Maltbie, on page 458 of the Yalden testimony, that the amount expended by the Knickerbocker Company—well, we will put it this way, have you said here the Knickerbocker Company's outlay for improvements, meters, plants, services, etc., provided for by the Municipal amount to $810,481.15?

A. I read all of this, particularly the testimony of Yalden, the report. I do not mean to say that I have read every word of this volume, but I looked
41778 it all over.

The Master: Well, is it possible that Yalden got some figures because the Municipal was financing the Knickerbocker. Was that the situation?

The Witness: I don't know. I don't know where he got his figures.

The Master: I got the impression from what Judge Ransom just read that that might have been the situation.

Mr. Chambers: Somewhere there is some statement of how he got the Knickerbocker figures, but I cannot remember where it is.

Q. On page 748, you get the details of the way that $810,481.15, the amount expended by the Municipal Company for account of the Knickerbocker, was made up by Yalden; namely $660,842.70 for gas works, $143—

A. Just a moment. I do not follow you; I do not see those figures.

Q. 1884, the last line on page 748?

A. Yes, I see that; oh, yes, I see.

Q. You see that $810,481.15 in the total column?

A. Right.

Q. That is the figure which was given on page 41780
458 as the amount expended by the Municipal Company for account of the Knickerbocker?

The Master: That is correct.

Q. Now, on page 748 you get the things which went into that?

The Master: Under the total capital investments, Municipal and Knickerbocker Gas Light Companies.

Q. Yes; $660,842.70 for gas works, $143,372.17 for mains, meters and services; $4,991.12 for horses, wagons, tools, etc., $1,275.16 for offices; making the total of $810,481.15, but not one bit of the amount expended by the Municipal Company for the account 41781
of the Knickerbocker Company for land.

A. Nothing in the real estate column shown, nothing in the real estate column, opposite that item.

By the Master:

Q. On that line?

A. On that line, correct.

The Master: I think the record ought to show in this connection that the entire line is in italics, and that the line immediately preceding that starts off in the first column giving the figure of real estate, $561,462.83, not in italics; pat-

ent, $904,087.89; gas works, $1,666,487.62; mains, meters and services; $993,865.03; horses, wagons, tools, etc., $28,483.80; offices, $7,880.72, making a total of $4,092,377.80. That line not being in italics, nor any part of it.

Mr. Ransom: And the foot note saying, "The figures in italics refer to the Knickerbocker Company."

The Master: Yes, that was spread on the record before.

By Mr. Ransom:

41783 Q. Now, then, in view of these things to which I have just called your attention, if you however divide the real estate owned by the Municipal Company, the $561,462.83, between 44th Street which was Municipal, and 99th Street which was Knickerbocker, both your figures for 44th Street and 99th Street are wrong, are they not?

A. I would not put it that way.

Q. What would be the best you could say about it?

A. I would say that if the figure of $561,000, odd does not include the land at both 44th and 99th Streets, then my figures are in error.

41784 Q. Now, what cost did you assume for Block 1682, Lot 11, and for Block 1704, Lot 5, Parcel 2, at the 111th Street holder station? Did you put those together or separately?

A. No, separately.

Q. Well, take Block 1682, Lot 11?

A. Block 1682, Lots 8 and 11.

The Master: Yes, 8 is that little triangle.

The Witness: Yes, at the end of 1918, $60,362.

Q. How much of that did you—

The Master: How much?

The Witness: $60,362.

Q. How much of that was assumed cost to some predecessor company?

A. $52,000.

Q. Even?

A. Yes.

The Master: What company?

The Witness: That is the Harlem Gas Light Company.

The Master: Where did you get that figure?

Q. Just a moment on that. Was not the figure that you gave Mr. Ulrich the other day $52,507?

A. No, you have got $507 of assessments added in there. 41786

Q. Assessments before or after 1884?

A. After 1884. What was the question?

Q. Perhaps we had better get the cost of the other. What cost did you assume for the other parcel as of December 31, 1918?

A. Now, which parcel?

Q. Block 1704, Lot 5, Parcel 2?

A. 225 feet frontage on each street; $23,803.

Q. How much of that was the assumed cost to some predecessor company?

A. $21,000.

Q. Now, both these figures you worked out in some way from the Yalden report? 41787

A. Yes, Senate Document 47.

Q. The Consolidated Gas Company acquired this land from the Harlem Gas Light Company?

A. It did.

Q. Did you find anywhere in the Yalden report any metes or bounds or descriptions, or is the situation the same as you have described as to other parcels?

The Master: In other words, did you take Rowland's description of the 111th Street prop-

erty and assume that to be the property referred to by Yalden?

The Witness: Yes.

Q. Now, what figures does Yalden give as the book—

A. (Interposing) Except that there is that little triangular parcel there, Lot 8, which was bought by the company after 1884.

By the Master:

Q. Yes. What was the value of 1862, Lot 11, excluding that Lot 8, which you ascribed to the
41789 predecessor company?

A. That is the $52,000, because—

Q. All right. As to that lot, then, you identified it in the manner I have described?

A. Yes.

By Mr. Ransom:

Q. What figures does Yalden give as the book cost of the land of the Harlem Gas Light Company; was it $158,899.81?

A. Yes, that is the amount found in several places in the Yalden report and Yalden's testimony of the real estate as shown by the books of the company; $158,899.81.

41790 Q. You apportioned that amount to all of the Harlem Gas Light Company's land, did you not, including 114th Street, the Third Avenue property, and the Inwood property.

A. 114th Street was the item to which I have already referred, that I took the Rowland figure for that land and building on the corner. In the $158,000 I ignored the 114th Street property being in there, and out of that I apportioned a part which in my opinion was attributable to these two parcels of land to which you have referred.

By the Master:

Q. Well, how did you come to exclude 114th Street?

A. Well, I have allowed that separately.

Q. Why?

A. I have got that—well, there was no basis upon which you could apportion it, in my opinion. That is separate from this other property. It is a long distance away, it is not contiguous, and this other property was more or less of a unit, with the exception of Inwood.

Q. But the Harlem Gas Light Company investment in real estate was $158,000 odd, was it not? 41782

A. Yes.

Q. That included all their real estate?

A. Yes.

Q. That included the 114th Street and Third Avenue?

A. Yes.

Q. So that that piece was part of the $158,000.

A. Yes.

Mr. Ransom: And Inwood?

The Witness: And Inwood.

The Master: Yes, proceed.

By Mr. Ransom: 41793

Q. Well, you disregarded that $158,000 in so far as it relates to the 114th Street property?

A. I did.

By the Master:

Q. Well, that is what I asked before, why? $158,000 covers it.

A. That is true, but—

Q. Why did you disregard it?

A. Well, it is an entirely different property, it is located in an entirely different place.

41794 Milo R. Maltbie, Cross.

Q. Well, I do not want to appear offensive by what I say, but that was none of your business.

A. But here, you have to put in 114th and Third Avenue at some item, don't you?

Q. Yes, but it was part of the $158,000?

A. Yes, but—

Q. Now, you say you excluded 114th Street from your $158,000?

A. No, I think you misunderstand me. Let me put it this way: I have assumed, for the purposes of this apportionment, that $158,000 covered the

41795 property besides the 114th Street.

Mr. Ransom: It did.

Q. Yes, but where did you get that assumption from?

A. Oh, it is not a correct assumption, but we would increase the amount. If I am wrong in that assumption the amount to be allowed should be reduced.

Q. But that is not the point. The point is, where do you get off to say that it did or did not, when the figure seems to show that it did.

A. I do not say that it was not included in the $158,000; it was.

41796 The Master: Well, proceed.

By Mr. Ransom:

Q. You took the Rowland Appraisal figure for 114th Street?

A. I did.

Q. Why did you take the Rowland Appraisal figure for this and not for Inwood and Third Avenue?

A. I did not put Inwood in at all.

Q. Well, for Third Avenue?

A. 114th and Third Avenue? That is what you are talking about: that is the figure I did take from Rowland.

Q. Yes, that is right. Why did you not take Rowland for the other properties?

A. Well, because I did not think it was proper.

Q. Why did you think it was proper as to this?

A. Because I could not get any other basis, and I put it in at that figure. That is conceding your claim for that; you do not claim any more. Are you criticing me for doing that?

Mr Ransom: Why, surely.

The Master: Why, yes, I think you have got to be consistent about these things. If $158,000 is to be taken as the cost of all of 41798
the real estate of the Harlem Gas Light Company, you ought to have remained consistent in your analysis and have taken out of it the 114th Street, and then taken out of it the Inwood and then applied the balance to what was left.

The Witness: I did take out the Inwood.

Mr. Ransom: Take the Inwood out or what?

The Master: I cannot quite understand why you did not take out 114th Street.

By Mr. Ransom:

Q. That is, you took Rowland's figure and tried in some way to eliminate Inwood from it?

A. No. 41799

Q. Well, did you take Inwood out of $158,000?

A. Yes; I took Inwood out, it was a small amount.

By the Master:

Q. How much did you take out for Inwood?

A. Seven or eight thousand dollars.

Q. Where did you get that figure from?

A. Well, that is figured out of the air.

Mr. Ransom: That does not differentiate it from the rest; that does not differentiate it from his other figures. He evidently has uniformity of method, at least.

The Master: Well, you see, if you get the questions to Mr. Maltbie, he will give you the answers and will make your record.

The Witness: Right.

By Mr. Ransom:

Q. Did you read in pages 323 and 324, but especially 324 of Senate Document 47 that this 114th Street and 111th Street property had been reclaimed and filled in by the predecessor company?

A. I did, well—

Q. And charged to operating expenses of the company and not to real estate or construction account?

41801

A. I think I read that.

Q. What?

A. I think I read that.

The Master: Where is that?

The Witness: 324.

Mr. Ransom: Bottom of 323 and 324.

The Master: Whose testimony is this, Yalden's?

Mr. Ransom: Moss, vice president.

The Master: Of what company?

Mr. Ransom: Of the Harlem Company.

The Master (reading): The western boundary is First Avenue, the northern boundary 175 feet about north of 111th Street.

41802

The Witness: You want to read the whole page, though, on that, when you read it; and in connection therewith read page 468, Yalden's testimony.

Mr. Ransom: But Yalden, of course, refers only to book—

The Master: $158,000.

Mr. Ransom: To book entries under real estate account, and of course when the Consolidated acquired this property they acquired what

this predecessor company had done and not charged to real estate.

The Master: Next question. The witness says you have got to read the entire page to get a fair idea.

Q. But you did not take any such expenses, labor and materials and the like for filling in that property, into account in fixing your cost of land?

A. No.

The Master: You do not know how much that was?

The Witness: I do not. 41804

Q. Do you know what has been the total amount spent by the Consolidated Gas Company for the construction of additions and improvements, and the acquisition of other property used in its gas business, in each of the years since 1910?

A. No, except as shown by the exhibits in the case.

Q. Is your allowance for construction capital a substitute for interest during construction, which forms a part of the value of the property on which the company is entitled to a return?

A. Not entirely.

Q. Well, is it in any part?

A. It is in part.

Q. To what extent? 41805

A. To this extent: The property included in the other tables and covered by table in summary 277, I think 275, includes the property from the very moment that the expense is incurred; it is added to the property upon which finally a rate base is computed, and there is no period of construction under that method of charge. Now, that being the case, and there being no interest charged to construction, as testified, and there being none to be charged on that basis, the company must have in addition, or should be al-

lowed, in my opinion, in addition, an amount for construction materials and supplies and for money with which to pay bills for construction work as they come in, before they are charged into the construction account under that method, and that is what this construction capital is provided for.

Q. Is not your allowance of $180,000 for construction capital equal to 6 per cent of the average annual expenditure by the complainant company for construction purposes?

A. Well, I have never figured it out that way.

41807 Q. How did you figure it out?

A. I figured it out by taking materials and supplies for construction purposes and working cash in the bank for construction purposes, eliminating the work done for other companies, of course, and any construction capital that would be provided for the work being done for other companies.

Q. Why do you decrease the amount of construction capital from $300,000 in 1912 to only $180,000 in 1919, in spite of the increase in the cost of doing construction work?

A. The amount of work actually done, construction work, or additional construction, decreased in

41808 those years.

The Master: What do you figure the construction work to be for 1920?

The Witness: I have not made any figure upon that for 1920. Well, wait just a moment; let me see, I may be wrong about that. No, not for 1920. I get no figure for 1920.

Q. What figure for 1919?

A. $180,000.

By the Master:

Q. That was based upon the actual accounts of construction work they did in 1919?

A. No, not all of those figures are in evidence yet I took 1918 and the first part of 1919 and made an estimate upon that.

Q. Suppose the company concludes to do some expensive construction work this year, hasn't that got to be increased?

A. If it increased the amount over the amount in 1918, $180,000 would not be sufficient.

Q. How am I to know?

Mr. Chambers: Suppose they do not do any?

A. Who was it said, "I know of no way of judging the future except by the past."

Q. I guess it was old Pat Henry, it is my recollection. 41810

A. It was good, whoever said it.

By Mr. Ransom:

Q. Have you undertaken to estimate the construction requirements of the Consolidated and its allied companies?

A. No. This is all for the Consolidated Gas Company.

The Master: For the Consolidated alone?

The Witness: Only so far as I have allowed $180,000 for 1919.

Q. How much of your assumption as to the cost of other fixed capital for 1906 did you assume as the cost of engineering administration, etc., which you testified was included in the amount of $18,567,801 shown for 1906? 41811

A. I have no figures showing that separately. Mr. Hine included engineering construction in his charge wherever he found them.

Q. Have you any way of giving this Court any idea as to how much for engineering, administration, etc., you have included in this 1906 figure for other fixed capital?

A. I have not anything further than what is shown in the evidence available to present at this time. Doubtless some figures could be worked out.

Q. Have you worked out any such figures?

A. I have just said I have not.

Q. Have you even made an estimate?

A. No.

Q. That is, on the face of this Exhibit AA-466 which you once called rate base founded on cost—

A. Once called? Now called.

Q. Well, we will get to that in a minute. You
41813 have put opposite the item "Engineering, Administration, Etc.," which is Item No. 5, "included in above figures," and you are not able to give this Court any idea as to the amounts, if any, you have included in the above figures for cost of engineering, administration, and the like?

A. I can give the Court some idea.

Q. Well, what idea?

A. Whatever has been charged by the company for engineering and administration, etc., upon the books of the company is included in Item 2.

Q. You cannot give any idea of what it is?

A. Well, I believe there is some testimony about
41814 their—

Q. I am asking you?

A. Not in addition to what is in the record.

Q. In the next item on your Exhibit AA-466, "Organization," as you call it, you set forth no figures in any of the years, but undertake to say "None found separate from above figures"?

A. I do say that.

Q. That is simply because you did not find any separate figure, from the cost which you assume for land, for fixed capital and working capital, etc.?

A. And other fixed capital. In addition to the

items given above I found nothing shown on the books of the company for organization.

Q. Was that the same situation as to engineering, administration, etc.?

A. No, not quite.

Q. How did it differ?

A. Because there were some charges on the books of the company for engineering.

Q. Complete charges, according to your judgment?

A. What do you mean by complete?

Q. Do you think that covered all the outlays of the company for engineering, administration, and the 41816
like.

A. Oh, I do not know whether it covered all of them, or more. We took them as we found them.

Q. Now in the next Item 7, on Exhibit AA-466, you put interest and taxes, and I suppose that means interest and taxes during construction?

A. Yes.

Q. You undertake to say, "None found separate from above figures"?

A. Yes.

Q. You did not find any such items in the books?

A. There is an item in your balance sheet opposite interest, interest and taxes during construction, 41817
a credit item. I do not include that.

Q. Do you mean to imply that a plant like the Consolidated could be built, established and begun to be operated without a cost of interest and taxes during construction?

A. In the way these figures are made up, to show cost, yes, and if a return is allowed from the time you put your money into the property, whether it is completed or not, why, you do not need another allowance for interest and taxes during construction. You get it twice if they give it to you. If you do

not put the amount in until the construction is completed and the thing is used to serve the consumers, why, then the amount upon which the consumers must pay a return is not figured except from the point of the completion of the work, and then you would allow interest and taxes during construction so far as they would be necessarily paid. But you cannot do both.

Q. With respect to franchises, you do not put in here the $7,781,000 shown by the books of the company?

41819 A. I think it is quite obvious it is not there.

Q. By "Actual Cost not Obtainable" you mean actual cost to predecessor companies?

A. I do.

Q. And in "Going Value," you say opposite that "None claimed by complainant." By that you mean none claimed by the complainant in this case?

A. I do.

Q. In the cases decided by you while you were a Public Service Commissioner, the three gas cases to which we referred yesterday, interest during construction, engineering, administration, etc., were not shown by the books. Didn't you make a separate

41820 percentage allowance, additional?

A. Well, I wish you would separate that question. Take them item by item. I do not want to answer that omnibusly.

Q. Take the Brooklyn Borough Gas case, to which we referred yesterday. In that case didn't you make an allowance for engineering, supervision and contractor's profit, amounting to 22 per cent of the value of the physical property other than land?

A. Well, I cannot answer those questions in specific cases, for specific amounts, without looking up the record. I do not carry those figures in mind for

every case. Now, and then one sticks but ordinarily they do not.

The Master: Do you recall that you made an allowance?

The Witness: Yes, I did.

Q. Well, is it approximately that?

A. I do not recall the percentage.

Q. Didn't you also in the same case make an allowance for what you called then and there "Preliminary and Development expenses," 18 per cent of the value of the physical property, including land?

A. I do not recall the percentage. I made an allow- 41822
ance for that amount—for those items.

Q. In the Queensboro case to which we referred yesterday, did you not allow 20 per cent for engineering, supervision and contractor's profit and 16.7 per cent for preliminary and development expenses?

A. I cannot recall the percentage I allowed for those items.

Q. Don't you recognize those as substantially the percentages?

A. No, I do not carry those figures in my head. Now and then one remains, but I cannot carry figures for all these different cases in my head, and confirm them on the stand without looking at my papers. 41823

Mr. O'Brien: Of course, this is all over my objection, your Honor, representing the defendant Swann.

The Master: If you have made any, yes.

Mr. O'Brien: I am not bound by any rulings made by the Public Service Commission during the attorneyship of Mr. Ransom.

The Master: Or before.

Mr. O'Brien: Or the commissionership of Col. Hayward or Mr. Maltbie or Mr. Kracke.

Mr. Ransom: Or Mr. Hine.

Mr. Chambers: Of course, I do not feel personally bound by anything that Mr. Woods did.

Q. In the Kings County Lighting Company case didn't you allow 21.8 per cent for supervision, engineering and contractor's profit, and 12 per cent for preliminary and development expenses?

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Exception.

A. I allowed for those items, but I do not recall

41825 the percentages.

Mr. Chambers: Each case has to be decided on its own merits.

Mr. Ransom: I think that is all.

The Master: Any re-direct?

Mr. Chambers: Yes.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. Mr. Maltbie, in fixing working capital in the rate cases while you were a Public Service Commissioner, some of which you have been interrogated about, did you follow the same methods and principles that you have applied here?

Mr. Ransom: Objected to as not re-direct.

41826 The Master: I will allow it.

Mr. Ransom: Exception.

A. I did.

Q. And did you follow that same method in other cases?

A. I followed the same method in all cases.

Q. The working capital that you testified to relates only to the Consolidated Gas Company?

A. Correct.

Q. If all of the cost which has been apportioned by you to these various parcels of property shown in Exhibit AA-126 was charged against land included

in the rate base, could you tell the Master by what amount in the table would be increased?

Mr. Ransom: Objected to as incompetent, argumentative, and not re-direct examination.

The Master: What is the question?

Mr. Chambers: I want him to tell if any apportionments were made as to these various parcels of property, how much it would increase the amount that is used in place of the amounts that are apportioned—the sum, to give you an idea. The amount does not make any difference, anyway, very much. 41828

Mr. Ransom: I object. They cannot mutilate properties in a variety of different ways.

The Master: He is trying to put it together again.

Mr. Chambers: We would have a right to let the Master take it without apportionment; it would not be to our disadvantage.

The Master: Do not bother, Mr. Maltbie; he has not got it here.

The Witness: I know about the figure.

The Master: About the figure?

The Witness: About the figure, yes.

The Master: Let us have it. 41829

The Witness: It is about $400,000, as of the end of 1918.

Q. You were asked something about the Kings County Lighting Company case, and counsel asserted in court here that that case was reversed both in the Appellate Division and in the Court of Appeals. What have you to say about it, Mr. Maltbie?

Mr. Ransom: I object.

The Master: I will sustain the objection to that. I do not take Judge Ransom's statement

as evidence of the fact, and I am not going to have the witness give any evidence about it.

Mr. Chambers: All right, if that is the fact, I am satisfied—if the Master does not feel that what Judge Ransom said was of any consequence or was the fact.

The Master: Whatever counsel say, whether for the complainant or the defendants, is absolutely of no consequence except by way of argument, and a statement of any fact will be disregarded and must be disregarded unless it is
41831 proven by a witness under oath or by some other method recognized by the law.

Mr. Ransom: I shall call your Honor's attention to the opinion of the Appellate Division in that case, because it bears very much upon some of the theories that have been advanced by this witness.

The Master: I will probably look at the Appellate Division decision in this and some other cases—in that and some other cases.

Q. You have said, I think—perhaps this may be subject to criticism for repetition, but so far as working capital is concerned, Mr. Maltbie, you say that
41832 each case has to be studied and decided on its own merits in that regard?

Mr. Ransom: I object to it.

The Master: Yes, it is subject to criticism; the question is not allowed.

Mr. Chambers: Exception.

Q. I will ask it this way: You would not say that there was any set or stereotyped rule that could be used in applying working capital to each company?

Mr. Ransom: Objected to as not re-direct.

The Master: I do not know how you make

the question any different by the different words you use. It is not allowed.

Mr. Chambers: Exception. That is all I think I have now. Possibly there may be something I think of later.

Mr. Ransom: Well, the examination is ended, I take it?

The Master: Of course, it is ended.

Mr. Chambers: A case is never ended until it is closed.

41834

FRANCIS T. MYLOTT, recalled:

The Master: Are you calling Mr. Mylott to testify to computations?

Mr. Chambers: Well, no, not exactly.

The Master: Because if you are, I will not take any more computations. I am going to do the rest of the computing myself.

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Mylott, do you know how the item in Complainant's Exhibit 365 for law expenses is made up?

41835

Mr. Ransom: Objected to as immaterial, incompetent, and fully covered.

The Master: I will allow it. I will allow that for a minute. Do you know how it is made up, Mr. Mylott?

A. I do.

The Master: The witness says he knows how it is made up.

Q. Will you please state?

Mr. Ransom: Objected to as incompetent.

The Master: What do you mean; state what?

Mr. Chambers: How it is made up.

The Master: How it is made up from the books? Objection sustained. I will look at it myself.

Mr. Chambers: You cannot tell.

The Master: Then you will have to show me from the books. If this witness can tell, I can tell.

Mr. Chambers: Well, he has studied it.

The Master: Then you will have to show me so I can study it. I have taken innumerable tables
41837 and tabulations for the convenience of the Court, but I have reached the point where I think I better stop taking any more tables and wherever it depends on an analysis of book entries my attention will have to be called to it, with the theory of counsel, and I will analyze them and compute them myself.

Mr. Chambers: Exception.

Q. What were the principal items charged to general expenses, law expense, during the first eight months of 1919?

Mr. Ransom: Objected to.

The Master: Same ruling. Counsel may call
41838 my attention to any items or any vouchers which they have in mind.

Mr. Chambers: We have not had an opportunity to go into these eight months of 1919.

Mr. Ransom: They have been going into it for weeks and months.

The Master: Whether you have or have not, the question called for something from this witness with reference to book entries and voucher entries, and I shall require counsel, all these matters being before the Court, to direct my at-

tention to them in the summing up, and I will analyze them. I will not take any more accountant testimony on it.

Mr. Chambers: Exception.

Q. In the case of the following, was any statement made upon the voucher, or any paper attached thereto, indicating the kind of service rendered or the purpose for which the service was rendered—

Mr. Ransom: I object to his reading in this.

The Master: No, I will let him do it.

Q. (Continued.) Voucher 18, Shearman & Sterling Voucher 1677, Beardsley, Hemmens & Taylor; 41840
Voucher 4763, Edward N. Schieberling; Voucher 6125, Shearman & Sterling; Voucher 9248, Shearman & Sterling; Voucher 9824, Edward N. Schieberling; Voucher 10350, Whitman, Ottinger & Ransom; Voucher 814, Whitman, Ottinger & Ransom; Voucher 13317, Whitman, Ottinger & Ransom; and Voucher 505, the same? That completes the question.

Mr. Ransom: I object to it.

The Master: Objection sustained for the reasons already stated.

Mr. Chambers: Exception.

The Master: And for the additional reason that the vouchers speak for themselves. 41841

Mr. Chambers: They are not in evidence. I call for those vouchers now.

The Master: You can have them marked in evidence.

Mr. Chambers: Yes, I will offer those in evidence now.

The Master: Yes, they will be considered in evidence, no number being given them; they are identified by their voucher numbers.

Mr. Chambers: Well, let me see them; I would like to see what I am offering.

Mr. Ransom: They will probably be here in a few moments.

Mr. Chambers: They were here yesterday.

Mr. Ransom: They were here yesterday and they were here today.

The Master: You better reserve your offer for a few minutes, and proceed.

Mr. Chambers: Yes, I will do that.

Q. In the case of Voucher 7897 of 1919, for Martin S. Decker, what was the purpose of the expenditure as entered on the bill?

41843 Mr. Ransom: I object to it as immaterial and incompetent.

The Master: The objection is sustained.

Mr. Ransom: It is picayune and fly-specking.

Mr. Chambers: Exception.

Q. Will you give the total in the first eight months of 1919 of the payment to Whitman, Ottinger & Ransom?

Mr. Ransom: Objected to—more fly-specking.

The Master: Objection sustained. I will total it myself.

Mr. Chambers: Exception.

Q. What was the total amount paid to Sherman & 41844 Sterling for the first eight months of 1919?

Mr. Ransom: Objected to.

The Master: Same ruling. I will do it myself.

Mr. Chambers: Exception.

Q. Can you give the amounts paid to Beardsley, Hemmens & Taylor, or Samuel A. Beardsley, in each of the five years preceding 1919?

Mr. Ransom: Objected to.

The Master: Same ruling. You can offer the entries in evidence if they are not already in.

Mr. Ransom: They all are in evidence.

The Master: I understand they are, but if they are not, he can offer them all in as the basis of an argument.

Mr. Chambers: Exception.

Q. In Complainant's Exhibit 365 are you able to say where the expenses relating to the rate case here being tried before the Master have been included?

Mr. Ransom: Objected to. It has been fully covered and gone into at great length.

The Master: Objection sustained.

Mr. Chambers: Exception. 41846

Q. Have you analyzed the amount for the expense relating to the rate case now on trial before the Master, as shown in Exhibit 365, to determine what has been therein included relating to such rate case?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception. I suggest, if the Master please—did you hear that "cheap stuff," those remarks?

The Master: No, I did not.

Mr. Chambers: Well, I suggest that you tell counsel to make his objection in a gentlemanly way. 41847

The Master: Yes, I think so.

Mr. Chambers: I know he cannot do it, but will you just suggest it to him.

Mr. Ransom: I made a remark to my client.

Mr. Chambers: He said, "Cheap stuff."

The Master: If you will take your seat, Judge Ransom, we will get through with this. We should not have those situations coming up.

Q. Can you give the total, to determine what has been included in Exhibit 365 for the rate case now on trial before the Master, up to August 31, 1919?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Does this amount set forth in Exhibit 365 for the rate case now on trial include any payments for services to Shearman & Sterling?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. To Voucher 5380, for Paterson, Teele & Dennis, was there a memorandum attached?

41849 Mr. Ransom: Objected to; the document speaks for itself.

The Master: Same ruling.

Mr. Chambers: Exception. I call for that memorandum and voucher.

Mr. Ransom: The vouchers are not in the room for the moment, but they will be here in a short while.

Q. What did the memorandum state, attached to that Voucher 5380?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. What was the total amount of the bill included in Miscellaneous General Expense in Exhibit 365?

41850 Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: All of this matter can be presented to the Master upon oral argument.

Mr. Chambers: Well, I do not know whether it all can.

The Master: All that I have ruled out so far.

Mr. Chambers: We will see.

Q. What additional expense relating to the rate case now on trial was charged in the months of September and October, 1919, and included in Complianant's Exhibit 387 under, the heading Miscellaneous General Expense?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. In Complainant's Exhibits 365 and 387, are you able to say whether all of the expense relating to Defensive Emergency Service has been included under that title? 41852

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Are you able to say where the expenses relating to the guarding of the plants in the first eight months of 1919, guarding the plants of complainant company, have been charged?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Are you able to say where the expenses relating to the guarding of the plants of the complainant company in the first ten months of 1919 have been charged? 41853

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Are you able to say whether the amount stated in the Defensive Emergency Service expense, as given in the two exhibits, viz, Exhibits 365 and 387, is incorrect or correct?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. What was the amount of the items you were able to identify that should be transferred from Miscellaneous, Miscellaneous General Expense to Defensive Emergency Expense, during the first eight months of 1919?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. What was the amount of the items you were able to identify that should be transferred from Miscellaneous, Miscellaneous General Expense to Defen-
41855 sive Emergency Expense, during the first ten months of 1919?

The Master: Same ruling.

Mr. Chambers: Exception.

Mr. Ransom: I now have these vouchers here.

Mr. Chambers: Hand them over.

Q. In Complainant's Exhibits 365 and 387 are you able to say where the fees paid to persons for attending meetings of committees and Board of Directors have been included?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

41856 Q. What was the total amount paid in the first eight months of 1919 for meeting fees?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. How much of this was paid to officers and employees of the Consolidated Gas Company, are you able to say?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. What was the total amount paid in the first ten months of 1919 for meeting fees?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. How much of this was paid to officers or employees of the Consolidated Gas Company?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Have you ascertained the salaries of the general officers of the Consolidated Gas Company for 1919?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Will you give the names of the positions and the salaries paid as of July, 1919? 41858

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: As you found it on the books?

The Master: I can find it from the books just as well as he can.

Mr. Chambers: Maybe you can. Exception.

Q. In Complainant's Exhibits 365 and 387 have fees in various societies, in which the employees of the Consolidated Gas Company are members, been included in Miscellaneous General Expense?

The Master: Same ruling.

Mr. Chambers: Exception.

Mr. Clark: Salaries general officers are in 41859
those pay rolls.

The Master: What?

Mr. Clark: Salaries of general officers are in those pay rolls that we had to examine in the cashier's cage. They are not in the books.

The Master: That is all right, if there is any paper or document that you do not believe is in evidence, that you want to base any argument on or call my attention to, offer it.

Q. Take the first item in 1919, Merchants Associa-

tion of New York, for $550. Are you able to state how many memberships in that association this amount covers, and for whom they were paid?

The Master: Objection sustained, on the grounds previously stated, and on the additional ground that the record shows precisely how many memberships are represented.

Mr. Chambers: Exception.

Q. Take the last month of the ten month period and state the amount of charges in that month for expenses incidental to A. G. A. banquet and conven-
41861 tion?

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: The witness took it from the books; I can take it, too.

Mr. Chambers: Mr. Teele took all of his, too, for 1919.

Mr. Ransom: That is the best place to take it from.

The Master: That is all right. I will analyze Mr. Teele's exhibit and analyze all the other exhibits in the light of the entries made in the books and the criticism as to those entries. There
41862 is no use in asking these witnesses about them.

Q. Will you please state what was the total amount of such expenditures in the first eight months of 1919?

Mr. Ransom: Objected to.

The Master: Same ruling.

Q. For the first ten months of 1919?

The Master: Same ruling.

Mr. Chambers: Exception to both rulings.

Q. Have you ascertained the salaries paid to the general officers in the Engineering Department, in July, 1919?

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: The witness could get it nowhere but in the books, and I will get it from the same place.

Q. Will you give for each position the amount of salary paid at that time?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: I don't know, some of this information is not in the books.

Mr. Ransom: It is in the pay rolls. 41864

Mr. Chambers: It is in vouchers that are not in evidence.

The Master: I am not going to let this witness say what is on some voucher that is not in evidence. I am not going to let this witness say what is in books or vouchers not in evidence where he gets them from book entries or vouchers.

Mr. Chambers: I say the vouchers are not in evidence. I am going to put in just a few that I want in.

The Master: You put in all that you want in.

Q. Was any portion of this amount charged to 41865 other companies?

The Master: Same ruling.

Mr. Chambers: Speaking of the amount of salaries paid to general officers in the Engineering Department.

The Master: Same ruling; the books will show whether it was or not.

Mr. Chambers: Exception.

Q. What was the amount month by month?

The Master: Same ruling.

Mr. Chambers: Exception.

41866 Francis T. Mylott, Direct.

Q. What was the total of these salaries, at the annual rate, in July, 1919?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. What was charged to other companies on the annual basis?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. What was the charge to Sundry Debtors of $375 per month in 1919? For what was that charge made?

The Master: Same ruling.

41867 Mr. Chambers: Exception.

Q. Have you examined the expenditures included under the title "Defensive Emergency Service" in Complainant's Exhibit 365?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. What do they principally consist of?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Have you examined the item called "Claims and Arrears Expense" in Complainant's Exhibits 365 and 387?

The Master: Same ruling.

41868 Mr. Chambers: Exception.

Q. Of the total of $19,276.14 in Complainant's Exhibit 365, how much was paid to Shearman & Sterling for office rent?

The Master: Same ruling.

Mr. Chambers: Exception. Do you think you are going to be able to dig that out?

The Master: If he dug it out, I can. If he got it out of the air, I won't.

Mr. Chambers: I congratulate you on that.

The Master: Just to demonstrate what I am after, where did you get the item of rent, Mr. Mylott?

41869

The Witness: From the analysis of the claims and arrears expense of the General Ledger.

Mr. Chambers: Your Honor is going down there and analyze those?

The Master: If you want to point out that item to me, I will take it. I can look at the item and analyze it just as well as Mr. Mylott can.

Mr. O'Brien: But you have asserted you are not going to receive briefs.

The Master: I am going to hear argument.

Mr. O'Brien: When are you going to do this digging you are talking about?

41870

The Master: Right on the argument.

Q. Speaking of the last question which was ruled on "Office rent of Shearman & Sterling," are you able to say at what annual rate same would be?

Mr. Ransom: Objected to. We have covered that.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Have you examined what the ledger account called "Plant withdrawn from service suspense" for 1919?

The Master: Same ruling.

Mr. Chambers: Exception.

41871

Q. How much was charged to this account during the first eight months of 1919, referring to the last question?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. How much was charged to this account in the month of October, 1919?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Will you give the items going to make up the total?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Will you give the amount month by month for the first ten months of 1919, charged on the books of complainant company for newspaper advertising?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Do the amounts for newspaper advertising include payments to and by R. E. Livingston?

The Master: Same ruling.

Mr. Chambers: Exception.

41873 Q. Do they include amounts paid for other than newspaper advertising?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. What was the net amount charged as publicity expense for the first ten months of 1919?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. What was the gross amount charged for publicity expense for the first ten months of 1919?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Is the difference made up of sums charged to

41874 other companies?

The Master: Same ruling.

Mr. Chambers: Exception. Speaking of the difference between the net amount charged for publicity expense and the gross amount charged.

Q. Of the gross amount charged to publicity expense, how much was paid R. E. Livingston?

The Master: Same ruling.

Mr. Chambers: Exception. I now call for vouchers 3366, 8051, 8724, 11486 and 14017.

The Master: What is the first one you called for, what year?

41875

Mr. Chambers: All in 1919.

The Master: What is the first voucher number that you want?

Mr. Chambers: Well, I will take voucher 18.

Mr. Ransom (handing counsel): All these vouchers were listed at the end of Monday night's testimony. I would be willing to have them all considered in evidence.

The Master: No, let Mr. Chambers do as he pleases.

Mr. Chambers: I offer in evidence voucher No. 18, paid January 2, 1919, Shearman & Sterling, $12,500.

41876

The Master: That will be deemed in evidence.

Mr. Ransom: I object to this small stuff, trying to bring in this amount.

Mr. Chambers: It speaks of six months, services back.

The Master: I will look at that. Voucher No. 18 of 1919 is received in evidence.

Mr. Chambers: I am stating what is on the voucher.

Mr. Ransom: You have no business to state it.

Mr. Chambers: This is worth while. Paid January 2nd, 1919. Didn't I state that correctly?

41877

The Master: Yes.

Mr. Chambers: Isn't it for six months, services, $12,500, and isn't it to Shearman & Sterling?

The Master: Get your next voucher.

Mr. Chambers: Are you going to mark each one, or are you going to mark them all in a lump?

The Master: No, I will just receive it in evidence. It is in evidence without a number.

Mr. Chambers: Voucher 1677.

Mr. O'Brien: I would suggest that it be given a label for future purposes.

41878

The Master: It is labeled. I will mark it.

Voucher No. 18 marked Defendants' Exhibit AA-468.

Mr. Chambers: I offer in evidence voucher No. 1677 for 1919, $7,500, paid to Beardsley Hemmens & Taylor.

Mr. Ransom: I object to that cheap stuff, and this of midget-minded lawyers, just trying to smear this stuff on the record—coming down here from Albany.

The Master: It is received as Defendants' Exhibit AA-469.

41879 Voucher No. 1677 for 1919 marked Defendants' Exhibit AA-469.

Mr. Chambers: Services paid December 31st, 1919.

Mr. Ransom: Will your Honor strike out his continous effort to smear this stuff into the record?

The Master: Mr. Chambers, in offering these exhibits just offer the voucher number. There is no necessity for further designation

Mr. Chambers: Voucher 4763.

Mr. O'Brien: I do not catch the point of that ruling your Honor.

41880 The Master: You will catch it in a minute.

Mr. O'Brien: If this is a perfectly legitimate and fair transaction, why should there be such shaking and trembling here?

The Master: Do you offer that?

Mr. Chambers: Yes You want me to give the date, don't you? April 3rd, 1919.

The Master: That is received as Defendants' Exhibit AA-470, voucher No. 4763.

Marked Defendants' Exhibit AA-470.

Mr. Chambers: There won't be anything on the record to show what they are.

41881

The Master: Yes, there will.

Mr. Chambers: Voucher 6125. I call your Honor's attention, that it says "Balance to"—

The Master: No, do not call my attention to it. Do you offer it in evidence?

Mr. Chambers: Yes, certainly.

The Master: It will be time to call my attention to it later on. It is received as Defendants' Exhibit AA-471, Voucher No. 6125.

Marked Defendants' Exhibit AA-471.

Mr. O'Brien: I do not see why these should be described in the record by simply a voucher number.

41882

Mr. Chambers: Voucher 9248, I offer that in evidence.

The Master: Voucher No. 9248 is received as Exhibit AA-472.

Marked Defendants' Exhibit AA-472.

Mr. Chambers: Voucher 9824. I cannot state any more that is on it?

The Master: No. Voucher 9824 is received as Exhibit AA-473.

Marked Defendants' Exhibit AA-473.

Mr. Chambers: Voucher No. 10350, Whitman, Ottinger & Ransom.

Mr. Ransom: That is Voucher 16350. There seems to be a difference in our list.

41883

The Master: It should be Voucher 10350. Bring that down later.

Mr. Chambers: I offer Voucher No. 814, paid January 22nd, 1919.

The Master: That will be marked Exhibit AA-474.

Marked Defendants' Exhibit AA-474.

Mr. Chambers: Voucher 13317. They all read retainers. I offer that in evidence.

41884

The Master: Voucher No. 13317 is marked Exhibit AA-475.

Marked Defendants' Exhibit AA-475.

Mr. Chambers: Voucher 505, I offer that in evidence.

The Master: Received as Exhibit AA-476.

Marked Defendants' Exhibit AA-476.

Mr. Chambers: Voucher 7897, I offer that in evidence.

The Master: Voucher 7897 of 1919 is marked AA-477.

Marked Defendants' Exhibit AA-477.

41885 Mr. Chambers: Voucher 3366.

Mr. Ransom: There was no such voucher called for the other day.

Mr. Chambers: Well, I gave Mr. Davidson a supplemental list last night.

The Master: It is now produced.

Mr. Chambers: I offer this in evidence. I offer the whole thing here. There are two papers fastened together. It has a memorandum marked No. 86790 in red. That will identify that.

The Master: Voucher No. 3366, with a memorandum attached, is received as AA-478.

Marked Defendants' Exhibit AA-478.

41886 Mr. Chambers: Voucher 8051, I offer that in evidence.

The Master: Received and marked AA-479.

Marked Defendants' Exhibit AA-479.

Mr. Chambers: Voucher 8724, I offer that in evidence.

The Master: Received and marked AA-480.

Marked Defendants' Exhibit AA-480.

Mr. Chambers: Voucher 11486, I offer that in evidence.

The Master: Received and marked AA-481.

Marked Defendants' Exhibit AA-481.

41887

Mr. Chambers: Voucher 14017, I offer that in evidence.

The Master: Received and marked AA-482.

Marked Defendants' Exhibit AA-482.

Mr. Chambers: Voucher No. 3669, I offer that in evidence.

The Master: Voucher No. 3669 is received and marked AA-483.

Marked Defendants' Exhibit AA-483.

Mr. Chambers: Voucher 5383, I offer that in evidence.

The Master: Voucher 5383 is marked AA-484.

41888

Marked Defendants' Exhibit AA-484.

Mr. Chambers: Voucher 8727, I offer that in evidence.

The Master: Voucher 8727 is marked AA-485.

Marked Defendants' Exhibit AA-485.

Mr. O'Brien: This is a very important thing to have on the record, this bill of Judge Lacombe. It may be very vital and should be received in this case.

The Master: No, we will have the other vouchers now.

41889

Mr. Chambers: I have not any more vouchers that I want to offer this morning that we have listed here. Will you let me state on the record what some of these are for?

The Master: No.

Mr. Chambers: Not at all?

The Master: No, they speak for themselves; they are in evidence, they are in the record.

Mr. Ransom: They have called for about a quarter of a million vouchers.

The Master: We will take a recess until a quarter past two.

Mr. Chambers: Will the Master note that it is 1:22?

The Master: Note that it is 1:22, according to the clock here. That is not the right time. Note the time of adjournment as 1:10.

Recess.

Afternoon session.

FRANCES MYLOTT, resumed.

41891 BY MR. CHAMBERS:

Q. Mr. Mylott, have you ascertained the total amount paid to R. E. Livingston under the heading "Publicity expense, newspaper advertising, and gas logic" in the first six months of 1919?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Will you give the amount?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception. I want here and now to move to strike out the question that was

41892 asked Mr. Maltbie as to whether he had heard Mr. Yalden was a fugutive from justice, upon the ground that if Mr. Yalden was called as a witness, as I understand the rule, and they attempted to impeach his character, that question would not be allowed, as to whether he was a fugutive from justice. He was not even a witness here, he is not, as I understand it. If he had been convicted of crime they could offer the certificate of conviction, but such a loose statement to ask any witness about somebody else, it seems to me clearly

41803

incompetent, and not within any rules I know of.

The Master: I will deny the motion.

Mr. Chambers: Exception. That is all for Mr. Mylott now.

Mr. Ransom: I think I can refrain from cross-examination.

The Master: Call your best witness.

Mr. Chambers: There are some of these vouchers, as soon as Mr. Mylott gives me the list, that I will want to offer in evidence.

The Master: You had better go ahead right now.

41894

Mr. Chambers: He hasn't got it, he is working on it. You have had him here two days, or he would have had it.

The Master: This case is going to be wound up now. I can't wait any longer for Mr. Mylott. You have called for a great number of other vouchers that you haven't offered yet.

Mr. Chambers: You had a long list you were reading from this morning.

Mr. Chambers: You ruled out all the questions relating to them.

The Master: I did not rule out the evidence on which those questions related. I ruled out every computation, on the ground that if you were to offer in evidence the bases of the computations I would compute it myself.

41895

Mr. Chambers: Then you did not quite understand some of my questions. I asked him if he had analyzed certain accounts, and I was going to have the books here to show you.

The Master: I can do that.

Mr. Ransom: The books are in evidence.

The Master: Yes, the books are in evidence. If there is nothing more that you have, Mr. Chambers, I will declare your case closed.

41806 Mr. Chambers: Just wait a minute, I am not quite through yet.

The Master: I will give you a fair opportunity to put in anything else you have.

Mr. Chambers: Are Operating Ledgers A and B in evidence?

The Master: For what year?

Mr. Chambers: 1918, A and B for 1918 and 1919, both.

Mr. Ransom: They are in evidence.

Mr. Chambers: I think the eight months of 1919 are in.

41807 Mr. Ransom: More than that is in, if you will read the record.

Mr. Chambers: Operating Ledger for 1917. I will call for that and see if it is in.

Mr. Ransom: That is in evidence, offered about seven months ago.

Mr. Chambers: 1916.

Mr. Ransom: That was offered—

The Master: The Operating Ledgers from 1906 to 1917 inclusive are all in, and 1918 and 1919 are in. You ought to know what is in your record.

Mr. Chambers: Well, I don't think they are

41808 in properly.

Mr. Ransom: Perhaps you can put them in better.

The Master: You had better analyze your record and see what else you want to put in.

Mr. Chambers: Have you Voucher 10350?

Mr. Ransom: No, not yet. It has been telephoned for and is probably on its way.

Mr. Chambers: Is Voucher No. 9451 here?

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 9451 for 1919.

41899

Voucher received in evidence and marked Defendants' Exhibit AA-486.

Mr. Chambers: I call for Voucher No. 5380.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 5380, together with the accompanying memorandum dated April 17, 1919, signed by the assistant secretary.

Voucher received in evidence and marked Defendants' Exhibit AA-487.

Mr. Chambers: I call for Voucher No. 1774.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 1774. 41900

Voucher received in evidence and marked Defendants' Exhibit AA-488.

Mr. Chambers: I call for Voucher No. 3237.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 3237.

Received in evidence and marked Defendants' Exhibit AA-489.

Mr. Chambers: I offer in evidence Voucher No. 4867.

Voucher received in evidence and marked Defendants' Exhibit AA-490. 41901

Mr. Chambers: I call for Voucher No. 6474.

Mr. Ransom. It is produced.

Mr. Chambers: I offer in evidence Voucher No. 6474.

Voucher received in evidence and marked Defendants' Exhibit AA-491.

Mr. Chambers: I call for Voucher No. 7844.

Mr. Ransom: I hand you the five vouchers in this same category that you have just been calling for.

41902

Mr. Chambers: I offer Voucher No. 7884 in evidence.

Voucher received in evidence and marked Defendants' Exhibit AA-492.

Mr. Chambers: I offer in evidence Voucher No. 10330.

Voucher received in evidence and marked Defendants' Exhibit AA-493.

Mr. O'Brien: Did not the complainant withdraw that item from Teele's exhibit?

Mr. Chambers: I also offer in evidence Voucher No. 11244.

41903 Voucher received in evidence and marked Defendants' Exhibit AA-494.

Mr. Chambers I also offer in evidence Voucher No. 13061.

Voucher received in evidence and marked Defendants' Exhibit 495.

Mr. Chambers: I offer in evidence Voucher No. 14681.

Voucher received in evidence and marked Defendants' Exhibit AA-496.

Mr. Chambers: I call for Voucher No. 479.

Mr. Ransom: That is one of the two you called for that we have not yet been able to locate.

41904 If it came back from the defendants' representatives it has been mislaid, and I haven't been able to find it.

Mr. Chambers: We never had it, at least Mr. Mylott never did, he says.

Mr. Ransom: Other representatives of the defendants have had it.

Mr. Chambers: I call for Voucher No. 2512.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 2512.

41905

Voucher received in evidence and marked Defendants' Exhibit AA-497.

Mr. Chambers: I call for Voucher 6558.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 6558.

Voucher received in evidence and marked Defendants' Exhibit AA-498.

Mr. Chambers: I call for Voucher No. 8726 for 1919.

Mr. Ransom: It is produced.

Mr. Chambers: I offer this Voucher No. 8726 in evidence.

41906

Voucher received and marked Defendant's Exhibit AA-499.

Mr. Chambers: I call for Voucher No. 825.

Mr. Ransom: It is produced.

Mr. Chambers: I offer Voucher No. 825 in evidence.

Voucher received and marked Defendants' Exhibit AA-500.

Mr. Chambers: I call for Voucher No. 2730.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 2730.

41907

Voucher received and marked Defendants' Exhibit AA-501.

Mr. Chambers: I call for Voucher No. 2733.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 2733.

Voucher received and marked Defendants' Exhibit AA-502.

Mr. Chambers: I call for Voucher No. 3143.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 3143.

41908

Voucher received and marked Defendants' Exhibit AA-503.

Mr. Chambers: I call for Voucher No. 4127.

Mr. Ransom: It is produced.

Mr. Chambers: This voucher doesn't agree with the voucher number as we found it on the books. Voucher No. 4127 of 1919 is a voucher of the New York Telephone Company.

Mr. Ransom: It is simply another error.

The Master: Can't you locate it on the books?

Mr. Chambers: Yes, we will see if it is our error. If it is we will acknowledge it.

41909

The Master: It probably is.

Mr. Chambers: You say that?

The Master: Yes, although Mr. Mylott is pretty careful.

Mr. Chambers: This is a voucher of the Fairbanks Company. What we wanted is a voucher of the New York Telephone Company.

Mr. Davidson: I find it is No. 4147 on the ledger.

The Master: It is evidently a company error.

Mr. Chambers: It is an error on the part of the company?

Mr. Davidson: Well, I don't know.

41910

The Master: If the Voucher is 4127, and 4127 is not that voucher, then it is an error.

Mr. Chambers: Now, will you absolve us of any error?

Mr. Ransom: How much do you claim that defensive emergency service was on that telephone bill.

Mr. Chambers: That is not the idea. We did not make a mistake in this case, but the company did. I ask for Voucher No. 4382.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher 4382.

Voucher received and marked Defendants' Exhibit AA-504.

Mr. Chambers: I call for Voucher No. 5585.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 5585.

Voucher received and marked Defendants' Exhibit AA-505.

Mr. Chambers: I call for Voucher No. 5629. 41912

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 5629.

Voucher received and marked Defendants' Exhibit AA-506.

Mr. Chambers: I would like to ask Mr. Mylott a question.

Q. Mr. Mylott, when you found Voucher No. 127, that was under the New York Telephone Company on the books, wasn't it?

A. Yes, sir.

Q. And the Voucher No. 4127 that is produced here is to the Fairbanks Company? 41913

A. Yes, sir.

By Mr. Ransom:

Q. Did you ever examine Voucher No. 4127, Mr. Mylott?

A. Not outside of the one that was brought in for the Fairbanks Company.

Q. That is the one that was brought to you down town, the Fairbanks voucher?

A. Yes, sir.

Q. Have you ever seen Voucher No. 4127?

A. Yes, sir.

Q. Down town?

A. Yes, sir.

By the Master:

Q. You saw all these vouchers downtown, didn't you?

A. Not all of them.

Q. Many of them?

A. Voucher No. 4283, Fowler Manufacturing Company, was missing. We didn't get that.

Q. All but perhaps a few that were missing you looked at downtown?

41915 A. Yes.

By Mr. Ransom:

Q. So that you knew that Voucher No. 4127 was not the one you wanted?

Mr. Chambers: I object to that.

The Master: I am going to let Mr. Mylott answer the question, which I understand to be, you knew that there was an error about Voucher 4127, that that was not the real voucher you wanted.

Mr. Chambers: Before he came here, you mean?

The Master: Isn't that so, Mr. Mylott?

41916 The Witness: Yes, it is so.

The Master: Why waste a lot of time asking for a voucher you didn't want, Mr. Chambers?

Mr. Chambers: We don't know which is the one we want.

The Master: Yes, you did, you wanted the New York Telephone Company voucher, for an item of how much, Mr. Mylott?

The Witness: I don't know how much the whole voucher called for, we wanted it for a certain portion of it.

The Master: How much was the whole voucher?

The Witness: I don't know how much the whole voucher was.

The Master: How much was the portion that you wanted to check up?

The Witness: $4.19.

By Mr. Ransom:

Q. For what, defensive emergency service?

A. Yes.

Mr. Ransom: I will stipulate that the voucher shows that amount. 41918

Mr. Chambers: I won't take the stipulation.

Q. What is the number of the voucher that you do want that you did see?

A. I don't know.

Q. Did you see the voucher of the New York Telephone Company which gives that $4.19 item?

A. No, sir.

By the Master:

Q. Where did you get that?

A. From the books.

Q. In other words, the entire voucher is cut up, and part of it is charged to defensive emergency to the extent of $4.19? 41919

A. Yes, sir.

Q. That you found on the books?

A. Yes, sir.

Q. Where, in the General Ledger?

A. Yes, sir.

Mr. Ransom: In the defensive emergency account.

Mr. Chambers: I call for Voucher No. 7323.

Mr. Ransom: The situation to that voucher is the same as Voucher 479. If it has come

back from the representatives of the defendants it has been mislaid and we are not able to find it.

By Mr. Chambers:

Q. Have you had Voucher No. 7323, Mr. Mylott?

A. Yes, sir.

Q. Have you got it now?

A. No, sir.

Q. Whom did you return it to?

A. I don't remember correctly whether we took them back to Mr. Davidson, or whether Mr. Davidson or

41921 one of his assistants came in for them. I know the vouchers were in and out of the room several times.

By the Master:

Q. How many vouchers did you examine altogether, Mr. Mylott have you any idea?

A. I imagine three hundred or four hundred.

Q. Not more than that?

A. Well, that is taking the petty cash vouchers as a whole. If you divide the petty cash vouchers into each individual voucher—

Q. How many?

A. I haven't the least idea.

Q. Many thousands?

41922 A. Yes, it would run into the thousands.

Mr. Chambers: I call for Voucher No. 8801.

Mr. Ransom: It is produced.

Mr. Chambers: I offer this voucher in evidence.

Voucher received in evidence and marked Defendants' Exhibit AA-507.

Mr. Chambers: I call for Voucher No. 10338.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 10388.

41923

Voucher received in evidence and marked Defendants' Exhibit AA-508.

Mr. Chambers: I call for Voucher No. 12185.

Mr. Ransom: It is produced.

Mr. Chambers: I offer in evidence Voucher No. 12185.

Voucher received in evidence and marked Defendants' Exhibit AA-509.

Mr. Chambers: I call for Voucher No. 87.

Mr. Ransom: I produce all three of the vouchers of that kind that you called for.

Mr. Chambers: I offer in evidence Voucher No. 87.

41924

Voucher received in evidence and marked Defendants' Exhibit AA-510.

Mr. Chambers: I offer in evidence Voucher No. 6290.

Received in evidence and marked Defendants' Exhibit AA-511.

Mr. Chambers: I offer in evidence Voucher No. 9602.

Voucher received in evidence and marked Defendants' Exhibit AA-512.

Mr. Ransom: I now produce Voucher No. 10350, which you did not specify on your list, but which you wanted. You asked for 16350.

41925

The Master: That apparently was a stenographic error. I got the impression that Mr. Chambers probably asked for 10350. Mr. Friel said that perhaps he had made it 16350 through mistake.

Mr. Chambers: I offer in evidence Voucher No. 10350.

Voucher received in evidence and marked Defendants' Exhibit AA-513.

Mr. Chambers: Now, these others you don't have?

41926

Mr. Ransom: Well, there are only two.

Mr. Chambers: I now ask for general office petty cash voucher, 1919, for October.

The Master: You want to offer them in evidence, do you, Mr. Chambers?

Mr. Chambers: Yes, I will pick out—

The Master: You can offer the entire month in evidence. It will take too long to pick out a few vouchers. You have had your opportunity to see them since last July, or June.

Mr. Chambers: I have not had any opportunity to see them. Why do you say that? I have never
41927 had a chance to see these. I have been in court since July.

The Master: I repeat on the record that you and your associates and assistants have had the opportunity to look at these vouchers since last June or July. If you want to offer in evidence the petty cash vouchers for the month of October, described by you, I will take them in evidence and give them an exhibit number.

Mr. Chambers: I would like to see what I am offering.

The Master: I won't say any more about it. I have told you what I will do.

41928 Mr. Chambers: You won't let me see what I want to offer?

The Master: I have given you six months to look at them. Are they here?

Mr. Ransom: They are not. They call for about a quarter of a million vouchers without any specifications as to what items or what vouchers, and just blanket calls are not respected. If they would indicate what particular vouchers they wanted they would have been produced.

The Master: I will receive them in evidence without their being physically in court, if you

41929

want to put them in. You ought to know what they show or do not show.

Mr. Chambers: I don't know, I want to see.

The Master: That is all I will do.

Mr. Clark: I call the Court's attention to the fact that when I did call for specific petty cash vouchers they brought in the entire month and said it was one voucher.

Mr. Ransom: Yes, in particular cases—

The Master: There has got to be a limit to these 14-penny items.

Mr. Chambers: I want to take exception to the Master's ruling that we have had that opportunity 41930
to see all these vouchers, the defendants.

The Master: What do you mean you haven't had the opportunity?

Mr. Chambers: No.

The Master: Why not?

Mr. Chambers: We have not had the time, and some of the vouchers are missing anyway. There may be some more reasons if I could think of them.

I am going to state on the record at least that I asked for the October petty cash voucher to be produced in court, so that we might have an opportunity of offering a few of them as illustrat- 41931
ing a certain proposition.

The Master: Do you know what those few contain?

Mr. Chambers: I could if I had the October vouchers here, I could pick them out.

The Master: Do you know what those few contain that you want to illustrate? What point do you want to illustrate?

Mr. Chambers: Well, there are some disbursements in there.

41933

The Master: What kind?

Mr. Chambers: For meeting fees for one thing, and N. G. A. Banquet, for another.

The Master: That will be conceded, won't it, Mr. Ransom?

Mr. Ransom: That there are some vouchers covering those things?

The Master: Yes, covering those items.

Mr. Ransom: Yes.

The Master: Next.

Mr. Chambers: And that those run all through these petty cash vouchers.

41933 Mr. Ransom: They do not. The meeting fees do.

Mr. Chambers: I don't suppose you had a banquet every day or every month. Also dues to different societies.

The Master: Yes, that is fully on the record.

Mr. Ransom: I don't know of any in the petty cash vouchers.

The Master: There may be some.

Mr. Ransom: There possibly may be some.

The Master: You know that dues were paid.

Mr. Chambers: American Gas Association dues—

41934 Mr. Ransom: They put in various items of those dues by vouchers here today.

The Master: Yes, let them spread all this on the record.

Mr. Chambers: Annual dues of Hotel Association of New York City.

Mr. Ransom: I will admit that is there, if you will state the amount.

Mr. Chambers: The American Alliance, Inc., dues.

The Master: Yes, Judge Ransom will admit that, too.

41935

Mr. Ransom: Yes.

Mr. Chambers: Membership dues in the American Chemical Society.

Mr. Ransom: Yes.

Mr. Chambers: Dues of the Real Estate Board of New York.

Mr. Ransom: Yes.

Mr. Chambers: Queens Chamber of Commerce dues.

Mr. Ransom: Yes, if you say so.

The Master: You mean if Mr. Mylott says so?

41936

Mr. Ransom: No, if Mr. Chambers says it.

Mr. Chambers: Branch Six, dues to the Harlem Board of Commerce.

Mr. Ransom: If you say so.

Mr. Chambers: More Harlem Board of Commerce.

Mr. Ransom: If you say so.

Mr. Chambers: American Society of Heating and Ventilating Engineers.

Mr. Ransom: I will take your word for it.

Mr. Chambers: I don't know what is in them, I am just stating what we claim is in them.

41937

The Master: Your claim will be conceded, it is conceded that your claim is right. What more do you want?

Mr. Chambers: Dues of the Washington Heights Taxpayers?

Mr. Ransom: I will take your word for it.

Mr. Chambers: American Gas Association.

Mr. Ransom: You are reading in from some other months now I take it.

Mr. Chambers: Annual dues of the American Gas Association.

The Master: We have had that two or three times.

Mr. Ransom: You are repeating it again.

Mr. Chambers: No, we had the banquet.

Mr. Ransom: We had this a number of times.

Mr. Chambers: Real Estate Board of New York; A. S. L. E. dues.

The Master: That is all I will take. The record shows payments of dues to a number of these associations. It is fully spread on the record.

Mr. Ransom: I will consent to have all these petty cash vouchers go in evidence.

Mr. Chambers: Dues to the Society of Mechani-

41939 cal Engineers.

Your witness.

Mr. Ransom: No cross-examination.

The Master: Call your next witness.

SAMUEL HIRSCHEWITZ, recalled.

Mr. Clark: This is redirect on the cross-examination of Mr. Birdsley yesterday.

The Master: You are not going to have a redirect examination of Mr. Hirschewitz because of a cross-examintaion of Mr. Birdsley.

41940 Mr. Clark: If your Honor please, you allowed Mr. Birdsley to be cross-examined on something that Mr. Hirschewitz had put in evidence.

The Master: You can recall Mr. Birdsley for re-direct examination, or if you want to, I will let you recall Mr. Hirschewitz for additional direct.

Mr. Clark: Then I will do that, your Honor.

The Master: But you can't work it in as redirect.

Mr. Clark: The Master worked in cross-ex-

amination of Mr. Hirschewitz by way of Mr. Bir[illegible]ley.

The Master: Mr. Hirschewitz is recalled as a defendants' witness, direct testimony.

Mr. Chambers: Call it what you want to, he is here.

By Mr. Clark:

Q. Mr. Hirschewitz, I show you the test shown on your sworn report for January 19, 1917. You will note that for Branch 3 the corrected illuminating power is 22.10 on the test sheet, and on the sworn report it is 22.90, the figure 22.10 appearing below. Can you 41942
state how that difference occurred?

Mr. Ransom: I object to that as immaterial and incompetent.

Q. Can you give the explanation of that?

The Master: I will allow it.

Mr. Ransom: Exception.

A. Well, the only way I can explain it as I recall, it is 1917, the tests are made—I see this test sheet is written in ink, the tests are made with a lead pencil, and it is quite possible that at that time the readings were not made on this sheet, and this sheet was a copy from the original which was made, as I recall it, in a stenographer's note book which I used 41943
as the original. The only way I can explain it is the fact—

The Master: That do, you did not copy it off right?

The Witness: That I did not copy it off right.

Q. On this that I show you, the time of the test for December 12, 1906, as to the New Amsterdam, does not agree. Would the same explanation apply to that?

A. I think it would. This is a sheet written in ink.

Mr. Ransom: I don't think he should state what might be.

The Master: Oh, yes, take whatever he says about it.

Mr. Ransom: He doesn't say that it did.

The Master: Well, take whatever explanation Mr. Hirschewitz wants to make.

Q. As to this test sheet and sworn report for December 18, 1919, there appears a difference, Branch 4, between the amount of corrected illuminating power on the test sheet and on the sworn report. What is the
41945 difference?

Mr. Ransom: I object to that as incompetent.

The Master: I will not take that, I can see that myself.

Mr. Ransom: May the record show that this test sheet is in lead pencil handwriting, not in ink?

A. This sheet being copied as a result of the corrected candle power being copied from this sheet onto this, it would probably be due to the fact of incorrect copying.

Q. This, for July 30th, 1918, would you say the same explanation would apply to the difference be-
41946 tween the 18.30 and 18.35?

A. The same explanation as the last one.

Mr. Ransom: May the record again show that the test sheet is in pencil and not in ink?

The Master: Yes. As I understand it the witness says he made a mistake in copying from the test sheet onto the sworn report.

The Witness: That is correct.

Q. This test sheet for February 6, 1919, shows a barometer reading of 58 inches. Can you tell whether that is the correct barometer reading?

A. Judging from the logarithmic correction it could not be.

Q. What would the barometer pressure be to agree with the logarithm?

Mr. Ransom: I object to that.

The Master: Objection sustained. Can you tell from looking at the sheet, without making calculation, what the barometric reading was?

The Witness: It should be about 29.91 or 29.92.

Q. From this sheet for February 19, 1919, it appears that the logarithms at the lower right-hand corner do not add up to the final logarithms given. Can 41948
you account for that difference?

A. Well, the logarithm for temperature is not the correct one. This is evidently a copy from the original test that was made. The test as made was not on this sheet. The logarithmic correction for candles is the same as the logarithmic correction for temperature.

Mr. Ransom: May the record show that this is a test sheet in lead pencil?

The Witness: I think I can explain why that is in lead pencil. There were times when the supply was short.

By the Master: 41949

Q. Supply of what?

A. Supply of test sheets was short, and we made tests in this book, and when the supply came in they were copied onto these test sheets and sent down.

Q. Sometimes in lead pencil and sometimes in ink?

A. Sometimes in ink.

Q. Sometimes carefully and sometimes otherwise?

Mr. Clark: Out of about 12,000 there are half a dozen mistakes.

Mr. Ransom: We have already found over 500.

Mr. Clark: Not this kind of errors.

Mr. Ransom: We have found all the kinds there are.

By Mr. Clark:

Q. The candle power logarithm and the temperature logarithm are the same. What should the temperature logarithm be to agree to the temperature shown on the sheets?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Clark: Exception.

41951 The Master: You can ask him if he can say whether the total is correct.

Q. Can you say whether the total given there is correct, if the correct logarithm for temperature was put in place of the one there shown?

A. If I changed the logarithm correction for temperature from .0177 to .0011, it would give the resultant candle power.

Q. On this sheet that I show you, the time of burning 40 grains candle consumption and the equivalent of grains per hour, and the temperature of gas are omitted. Can you state how that could be?

A. This is a carbon copy. The original of this

41952 probably has the figures, the data.

Mr. Ransom: I move to strike that out.

The Master: How does it happen that a carbon copy would not have the impression of what you put on the original.

The Witness: That is due to the fact that we tried to economize on carbon paper, we sometimes have to do that. The carbon sheet is this size (indicating). We found that after using it a while the lower part, and this part here (indicating) is pretty well worn out. In order to

economize we turned the sheet about. In starting the test these factors are fixed, and in actually making the test we have to bring the carbon copy down in order to allow for the readings, and it is possible that in doing that the carbon copy was brought to this level and left out. I think an examination of the original copy would give the factors. In fact I can give you what it should be here from the logarithmic correction. 41953

Q. That is the time of burning 40 grains, and the equivalent of 40 grains per hour, are the last things that you put on your test sheet before you make your calculation? 41954

A. The time of the burning of candles is the last thing after taking the readings.

Mr. Clark: That is all.

Mr. Ransom: No cross-examination.

The Master: Next witness.

Mr. Clark: Might I ask the attorney for the complainant when they will be through with these test sheets?

Mr. Ransom: Well, I don't know, we haven't finished our checking. We find a bunch of errors every now and then?

Mr. Clark: I don't want any testimony on errors, I want to know how soon you will be through with them? 41955

Mr. Ransom: I suppose it will take two or three days more to finish the checking; I should think at least that.

The Master: Have you any other witness, Major Clark?

Mr. Ransom: Major Clark, I will give you twenty-five more of them here that we claim to be incorrect, and propose to include in our tables.

Mr. Clark: All right, we will show that they are correct.

The Master: Anything else for the defendants?

Mr. Ransom: May I just ask Mr. Hirschwitz a couple of questions?

Mr. Clark: Is he calling him as his witness?

The Master: No, he is calling him for cross-examination.

Mr. Clark: I thought he was finished with him.

The Master: He changed his mind.

41957 Mr. Clark: I expect to the Master's ruling.

By Mr. Ransom:

Q. I show you your tests, 79th Street, May 1, 1919, on barometer readings. There is no barometer reading?

A. No barometer reading on that. I can tell you what the barometer reading should be there.

Q. You have logarithms from which you can deduce what the barometer reading might have been?

A. Yes, sir.

Q. Now, I show your 19th Street test, August 25, 1919, where you have noted a barometer of 20.90. Do you believe that is accurate?

41958 A. That should be 30.90.

Q. 20.90 is too low for New York, isn't it?

A. It should be 30.90. The logarithmic correction would show that it should be 30.90.

Mr. Ransom: That is all.

The Master: Anything else?

Mr. Clark: May I have the privilege of redirect now?

The Master: Yes.

By Mr. Clark:

Q. What would the barometric reading on that sheet be?

Mr. Ransom: I object to that as incompetent.

The Master: If he can tell by looking at the sheet I will let him tell. What date is that sheet?

The Witness: May 1, 1919.

The Master: 79th Street station?

The Witness: 79th Street station. It should be 2991.

The Master: Next question.

Mr. Clark: That is all.

By Mr. Ransom:

Q. What you are doing is—

The Master: He is deducing it. 41960

Q. You are giving the logarithms from memory?

A. Yes, sir.

Mr. Ransom: That is all.

The Master: Is there anything else for any defendant?

Mr. O'Brien: Yes, I will call Mr. Addicks. I don't know whether it is Patti or Jenny Lind, but this may be the last appearance.

WALTER R. ADDICKS, recalled.

By Mr. O'Brien: 41961

Q. Mr. Addicks, have you prepared excerpts from the minutes of the Executive Committee of the complainant company covering the period from January 1, 1905, to date, so far as the minutes relate to the purchase of materials and supplies other than coal and oil?

A. Not to date, Mr. O'Brien.

Q. To January 6th?

A. The date which you asked for it.

Q. January 6, 1920?

A. Yes, sir.

Mr. Ransom: As a matter of fact it is January 9, 1920, there being none between January 6th and January 9th.

Q. And the papers that were handed to me two days ago are a correct copy of the excerpts which you made from the minutes?

A. Yes.

Q. To whom did you assign that work?

A. I personally went over it myself.

41963 The Master: No, whom did you assign to copy off the excerpts?

The Witness: That was done in my office; various people in my office made copies.

Q. Who were they?

A. Who were the clerks?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow it.

Q. Yes?

A. A Miss Curran and a Miss Ryan, I think, made the copies.

Q. Did you take the minutes for the period that I have described and make marks that would indicate

41964 what they were to extract and typewrite in these excerpts?

A. No, sir.

Q. How did they do that, what was your direction to them?

A. The directions of the Master at that time were taken by counsel and furnished to the office, and they went over them, and I also went over them.

Q. Went over what?

A. Went over all the minutes from the beginning to the end.

41965

Q. How did you leave the books for the girls to work on? Did you put a pencil mark in, or something in the leaves or what were your directions?

A. They took out all the minutes under the requirement—

The Master: You don't get the question. Did you give these young ladies instructions to copy anything out of these minutes?

The Witness: No, sir.

The Master: What did you do?

The Witness: Counsel gave instructions to my secretary.

41966

Q. What counsel?

A. Judge Ransom, as I understand.

Q. To your secretary?

A. Yes, sir.

Q. And they proceeded and did that work and then submitted the typewritten copies to you?

A. They made those copies, and I took the minute books myself, and read the minute books from 1905 to date, and noted everything that was taken, and everything that would come under the instructions.

Q. Then are you prepared to say that you know personally that these excerpts that are set forth in these four volumes, as I will call them, are complete—

41967

The Master: Three, isn't it?

Mr. O'Brien: I was given four

Mr. Ransom: The fourth is a list which you also called for of those present at meetings.

Mr. O'Brien: All right, Ransom, we will not quibble about it. What we want it is very important to have.

Mr. Ransom: You have got it.

Mr. O'Brien: We won't waste any time on it.

Maltbie is not in the cir.r, and he is not examining the witness.

The Master: Mr. O'Brien has the floor, therefore he is making a speech.

Mr. O'Brien: Yes, I will keep everybody in their place so far as I can within the rules that obtain in courts.

The Master: Go on and ask Mr. Addicks. Do these contain—

Mr. O'Brien: I want to frame that in my own way.

41969 The Master: All right, go ahead.

Q. Are you prepared to say that you know personally, Mr. Addicks, that these excerpts which you brought in here embrace and set forth every reference in the minutes of the Executive Committee during that period in relation to the purchase of materials and supplies?

A. Yes, sir, in accordance with the direction of the Master.

Q. I didn't ask you that.

The Master: Other than coal and oil.

Q. Other than coal and oil?

A. Other than coal and oil.

41970 Q. Why do you bring in the direction of the Master into your answer?

A. That is what I have to go by.

Q. You mean the paper that Judge Ransom has now?

A. It is from the minutes of that day. I had to have something to go by.

Q. The minutes, what page?

Mr. Ransom: Page 8,372, minutes of January 9, 1920, in which Mr. O'Brien sets forth what he asked for, and the Master directed that it be given to him.

Mr. O'Brien: Will counsel hand me that paper?

The Master: Hand it to Mr. O'Brien.

Mr. O'Brien: That statement there refers to resolutions, I want the minutes so far as they relate to this subject, whether it is in the form of a resolution or not. If there is discussion in there, if there is a statement, for instance, when they pass a resolution saying they are going to accept the offer of such and such a firm for the sale of merchandise, I want the excerpt that will cover everything that is in the minutes. 41972

Mr. Ransom: If you will interrogate the witness you will find that you have got it.

Q. Mr. Addicks, are these excerpts merely the resolutions that were passed, or do they embrace the minutes as they relate to the subject-matter I have referred to, outside of resolutions?

A. I think they include everything that you included in your request, from beginning to end, in every respect.

Q. Won't you give me a direct answer?

Mr. Ransom: I object to the comment of counsel. He has given a very direct answer.

The Master: I want it noted on the record that I have just looked at the portion covering December 3, 1912, to January 6, 1920, inclusive, from which it would appear that the matter taken off by Mr. Addicks is not limited to resolutions, but seems to cover all action by the Board with relation to the matter under examination. 41973

Q. Is that your belief, Mr. Addicks?

A. Yes, sir, that is my belief.

Q. Did you check it up to see whether they had left any discussion out of these excerpts?

A. If there was any discussion it would appear there.

Q. It would appear in these excerpts?

A. It would.

Q. Did you prepare this list of the names of the members of the Executive Committee?

A. I did.

Q. Do you say that this is a correct statement of the men who were present at the meetings on the dates set opposite their names?

A. I do.

41975 Q. On each page thereof?

A. I do. I personally checked every one.

Q. Have there been any additions made in the last six months to the Executive Committee, or any changes in the personnel of that committee?

A. I recall none.

Q. Mr. Sterling in each instance is John W. Sterling, deceased?

A. Yes, sir.

Q. Mr. Brady who is named here is Nicholas F. Brady in each instance?

A. His name does not appear as Nicholas F. Brady.

Q. I mean, that is the man?

41976 A. No, sir, not always.

Q. How far back would it be Nicholas F. Brady?

Mr. Ransom: That has all been covered before.

A. Sometime in 1913, I think.

Mr. Ransom: The date was fixed before; it is in the record.

The Witness: The year before the war, that was 1913, and probably in July.

Q. And who is this Mr. Palmer, what are his initials, or what is his first name?

A. I think Stephen F. Palmer, but I won't be sure.

Mr. Ransom: Stephen F. or Stephen M.

Mr. Carter: "S."

The Witness: I am not definite.

Q. Will you state if you know, how much stock Nicholas F. Brady owns in the Maxwell Company?

The Master: The objection is sustained.

Q. You don't know whether he owns any, Mr. Addicks?

A. I do not.

The Master: The same ruling. 41978

The Witness: I beg your pardon.

Mr. O'Brien: Under what theory of law does your Honor rule out a question in relation to the ownership of one of this Executive Committee in a company with which the company is doing business?

The Master: The Master declines to make any further statement at this time.

Mr. O'Brien: Does the answer of the witness stand?

The Master: The stenographer will read what I said.

(The record was read by the stenographer.) 41979

The Master: Well, if the stenographer took it, it will stay.

Q. Did you ever ask Mr. Nicholas Brady whether he owned any stock in the Maxwell Company?

Mr. Ransom: Objected to as immaterial.

The Master: The objection is sustained.

Q. Do you know whether any of the Executive Committee own stock in the Bartlett-Hayward Company, or have owned since 1906?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Is that on the theory that it does not make any difference?

The Master: The Master declines to make any further statement at this time.

Mr. O'Brien: Well, you have got my exception, Mr. Stenographer?

The Master: The stenographer will note that Mr. O'Brien is allowed an exception to the rulings made by the Master today, if not specifically taken by Mr. O'Brien.

Mr. O'Brien: I will note also an exception to
41981 all of the Master's rulings.

Q. Do you own any stock in the Bartlett-Hayward Company, Mr. Addicks?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Do you own any stock in the W. M. Crane Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Do you own any stock in any company—

The Master: Same ruling.

Q. (Continuing.) That sells materials and supplies to the complainant company, and have you owned
41982 any stock in any such company since 1906?

The Master: Same ruling.

Mr. O'Brien: That is a serious ruling, your Honor.

The Master: Well, that may be.

Q. Do you know, outside of the ownership of stock or the interests of members of the Executive Committee in companies doing business with the complainant company already on the record in this case—outside of those companies and those ownerships, will you state, so far as you know, the ownerships of the of-

fficers, trustees and members of the Executive Committee in the companies or firms or corporations or partnerships doing business with the company?

Mr. Ransom: I object to the question, if it be a question.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you state what your information is on that subject?

The Master: Same ruling.

Mr. O'Brien: I did not notice counsel for the plaintiff urging the Master to open the door to 41984
some answers on these questions.

The Master: Yes, I heard his objections to these questions.

Mr. O'Brien: Has he objected to them?

The Master: Yes.

Mr. O'Brien: Does the record show the objection of Mr. Ransom?

The Master: The record shows whatever the stenographer has taken. Do not answer that, Mr. Stenographer.

Mr. O'Brien: Read the last question and the record from then on.

The Master: The stenographer will read noth- 41985
ing at this time. Next question.

Mr. O'Brien: I except to your Honor's direction to the stenographer not to read the last question, and the record from that on.

The Master: Yes.

Q. What ownerships have any members of the Executive Committee or the trustees or any stockholders that you know of, in the General Gas Appliance Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. In the Reliable Stove Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. So that we get the name of the firm right, in the William M. Crane Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. In the J. K. Larkin Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. In the Michigan Stove Company?

41987 The Master: Same ruling.

Q. In the Maxwell Motor Sales Corporation?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you say, Mr. Addicks, that you were not aware at the time that the Executive Committee passed resolutions determining on the purchase of Maxwell Motor Sales machines, that you did not know that Mr. Brady's brother was a member of the Board of Directors of that corporation?

Mr. Ransom: I object to the question as highly improper. There is not a shred of evidence in the case for such an assumption as counsel makes.

41988 The Master: That is why I am going to let Mr. Addicks answer it. Did you know that Mr. Brady's brother was an officer or stockholder of the Maxwell Motor Company?

The Witness: I did not.

Q. Do you know anything about it?

Mr. Ransom: I object to it.

The Master: Objection sustained.

Q. Have you any information upon it?

Mr. Ransom: I object to it as highly improper.

The Master: Objection sustained. I allowed

Mr. Addicks to answer that one question, because I rather anticipated that the inquiry was made out of whole cloth, drawn out of the air.

Mr. Ransom: With apologies to M. R. M.

Q. Mr. Addicks, will you state what stock if any is held by the Executive Committee, or any of them, or the Board of Trustees, in the Air Reduction Company?

Mr. Ransom: Out of the air. Objected to.

The Master: Sustained.

Mr. O'Brien: That is a serious ruling, your Honor. 41990

The Master: That is the second one you have referred to recently.

Mr. O'Brien: What?

The Master: The second serious one today.

Mr. O'Brien: Exception.

Q. In the Isbell-Porter Company, at this time or any time since 1906?

The Master: Same ruling.

Q. In the Kelly & Jones Company?

The Master: What?

Mr. O'Brien: The same. I am saving time and space.

The Master: You will not save it by asking any 41991 further questions.

Mr. O'Brien: I am going to cover the record, if your Honor will not obstruct me. Kelly & Jones Company from whom they purchased, pursuant to a resolution of September 30, 1919.

The Master: Well, if that is a question I will not allow it.

Mr. O'Brien: From whom they purchased malleable and cast iron fittings; or concerning whom they passed a resolution as to malleable and cast iron fittings.

Mr. Ransom: That is somewhat after the eight months, I believe.

The Master: Now, ask him one question, and mention all the names that you want to mention, and then I will rule on one question.

Q. Mr. Addicks, please state what stock or interest was held or is held by any member of the Board of Trustees or the Executive Committee or any of the officers of the complainant company in the following companies: The Baltimore Gas Appliance & Manufacturing Company, E. E. Keating Company, Air Re-
41993 duction Sales Company, United Lead Wood Company, M. Samuel & Sons, Inc., Connolley Iron Sponge & Governor Company, the American Meter Company—

The Master: Go on, it is all one question.

Mr. O'Brien: That is special emphasis.

The Master: I noticed the emphasis.

Q. (Continuing.) Exide Battery Depots, Inc., Dahlstrom Metal Door Company, Didier-March Company, Standard Oil Company of New York, E. Stebbins Manufacturing Company, the Utica Valve & Fixture Company, Northwestern Construction Company, Northern Finance Company, Hickey Contracting Company, Sterling Contracting Company, Stand-
41994 ard Contracting Company?

Mr. O'Brien: Am I to understand the Master made these rulings on the objection of counsel for the plaintiff?

The Master: Yes.

Mr. O'Brien: In each instance?

The Master: Yes. The objection goes to this whole line. Perhaps it may help you to know the reason for my ruling. It is that the time allowed you to go into that matter has long since expired. You had witnesses on the stand, examined them at length, had all of these names, or

41995

could have had them from the books when you had other witnesses on the stand a long while ago, asking them about the interest of trustees in other corporations. You confined your questions at that time to coal and oil, as I recall it, and I decline to let you go into it again now.

Mr. Ransom: My objection was made also on the ground that under the state of the proofs in this case, after many months of trial, there is not the slightest foundation laid in the testimony which makes inquiry on any of these matters within the issues or pertinent.

41996

The Master: Well, I allowed the—

Mr. O'Brien: Oh, that is not any real objection, Judge.

The Master: I allowed a very wide inquiry some four months ago, of the stock interest of every trustee or member of the Executive Committee in companies with which this complainant company dealt. If at that time Mr. O'Brien had continued to ask questions of the companies that he is now asking, I should have allowed him to ask the questions at that time. In the exercise of my discretion, regulating the order of proof in this case, I decline to permit the case to be re-

41997

opened at this time, when I am convinced that it has no useful purpose. Now, you understand the ruling.

Mr. O'Brien: Your Honor is aware of the fact that the request for this data, to wit, the excerpts from the minutes, so far as they relate to supplies and materials purchased other than coal and oil, was made on January 9th. That is not months ago.

The Master: I am aware of that. I am likewise aware of the fact—

41008

Mr. O'Brien: And that I have been waiting until yesterday to get these excerpts.

The Master: I am likewise—

Mr. O'Brien: And that I made several and repeated attempts to have these excerpts furnished to me.

The Master: I am likewise aware of the fact that the names of the persons or concerns from whom this material was purchased were in the books, that you had access to them many many months ago, and that if you had asked when you asked for the coal and oil minutes, some six

41009 months ago, for these minutes that you only asked for in January, you would have had them many months ago.

Now, there is no sense in reading any more names, because that is the basis of my ruling. I will not allow the question so far as it has gone, nor will I allow it if you add every other name of every other concern from whom they bought material in the fifteen years since 1905. I will allow you an exception.

Mr. O'Brien: Well, no good would come from arguing it?

The Master: Not a bit. I am explaining at

42000 length the basis of my ruling, so you will know why to stop.

Mr. O'Brien: Yes, and yet you are talking about equity's doors being always open.

The Master: Yes.

Mr. O'Brien: And yet you have asserted many times in this case that if at any time there was something left out that had to be put in, or ought to be put in—

The Master: Yes.

Mr. O'Brien (continuing): And would be part of the case—

42001

The Master: I repeat it now.

Mr. O'Brien (continuing): You were not going to hold to any hard and fast rule in reference thereto.

The Master: I repeat it now, Mr. O'Brien, and if you have any witness who can swear that any trustee or member of the Executive Committee or important employee of the Consolidated Gas Company, this complainant, owns or has any substantial stock interest, or any stock interest, in any one of the companies which you have enumerated here today, I will let you prove it.

42002

Mr. O'Brien: Well, your Honor, you are making that statement now, but when we brought these men in, when I brought witnesses here to prove these things—

The Master: Prove what?

Mr. O'Brien: To prove a common ownership in the companies that are doing business with this company.

The Master: I am talking about trustees of this company. I let you examine Mr. Baker.

Mr. O'Brien: When I endeavored to do that, what did you say with regard to oil? You said you didn't care if they owned both companies.

42003

The Master: Yes.

Mr. O'Brien: All of those companies.

The Master: I said it did not make any difference; and yet—

Mr. O'Brien: It did not make any difference, that I would still have to show you where they could get gas oil cheaper.

The Master: Yes; and yet—

Mr. O'Brien: Then I suppose that the same ruling would apply to other materials, that it would still be incumbent upon the defendants

42004

to show that they could get any of these other materials, and get them cheaper.

The Master. And yet I allowed you to ask a long string of questions, I think it was of Mr. Sloane, one of the directors, enumerating 20 or 30 companies, and ask him if he had any interest in one or two coal companies. I let you examine other witnesses at great length, in spite of the fact that I told you I did not see how it made a bit of difference.

Mr. O'Brien: Well, I assume you hold the same view now?

42005 The Master: Well, I have said all I am going to say about it now.

Mr. O'Brien: I assume you hold the same view now.

The Master: I am ruling out your question now, because I gave you full opportunity at a prior time—

Mr. O'Brien: It would not take up a lot of time for Mr. Carter to answer those questions, your Honor.

The Master: Mr. Addicks.

Mr. O'Brien: Mr. Addicks, yes. It does not take time.

42006 The Master: If I were sure that it—

Mr. O'Brien: It does not embarrass the plaintiff.

The Master: If I were sure that it—

Mr. O'Brien: It does not retard the progress of this trial.

The Master: Wait a minute. If I were sure that it would not lead to a long list of other questions, which would lead us nowhere, I would let Mr. Addicks answer it; and just to show you what it amounts to, I am going to let Mr. Addicks say—

By the Master:

Q. Do you recall all of these companies that have been referred to, generally, by Mr. O'Brien?

A. The majority of them.

Q. Do you recall any instance, in any case mentioned, where you know that any trustee had stock interest or was an officer of any of these companies?

A. I do.

Q. Which ones?

A. One in which I am personally interested, which I forgot at the time I mentioned, when I was on direct, at another period of time, that I had a fractional interest in an appliance company which has been mentioned. 42008

Q. Yes.

A. And I forgot at that time I also have a small interest, coming to me in exactly the same way, through inheritance, in the American Meter Company.

Q. How much of an interest now?

A. I don't know the exact number of shares.

Q. How many do you think?

A. Well, I should guess somewhere about 25 shares; that is all.

Q. Out of a total of how many? 42009

A. Well, I don't know what the American Meter Company has.

Q. Now, do you know of any other trustee who has any interest in any of these companies that have been enumerated?

A. No, sir.

Mr. Ransom: Mr. Addicks is not a trustee is he?

The Witness: I am a trustee.

Mr. Ransom: Not a member of the Executive Committee?

42010 Walter R. Addicks, Direct.

The Witness: I am not a member of the Executive Committee, but I am a trustee.

The Master: I made the question broad enough to include all the trustees.

Mr. O'Brien: What?

The Master: I made the question broad enough to include all the trustees.

Mr. O'Brien: Why, you did not include the officers.

Q. Officers, how about officers? Do you know of any officers of your company that have an interest
42011 in any of these other companies?

A. Not one other than myself, as an officer or as trustee.

The Master: It is perfectly apparent to me that in the nature of things Mr. Addicks would not be in a position to know, except through some special circumstances, all of the stock holdings of all of these men who are trustees of this Consolidated Gas Company. It is apparent on its face.

Mr. O'Brien: Well, I appreciate the fact that Mr. Addicks has testified that his attention, so far as materials go, has been taken up with oil,
42012 and that the matter of purchases of other materials—

The Master: All right.

Mr. O'Brien (continuing): Are assigned to other men.

The Master: All right. Now, I allowed Mr. Addicks to answer the questions—

Mr. O'Brien: But the record is not going to be bare of my having made an opportunity, or made an effort to find out, so far as I can, whether the company are interested in these companies.

The Master: Mr. O'Brien, the work that you

42013

have done in this case would have been very very useful if you had been counsel to an investigating committee; but you entirely misconceive the forum and the purpose of this litigation. This is not an investigating committee; it is a trial of a law suit. The questions must be directed to bringing out a fact, and not to a fishing expedition.

Mr. O'Brien: Well, I differ with your Honor, and I take exception to your holding in that regard.

The Master: I have allowed you to go very far.

Mr. O'Brien: I have had my views as to 42014
what the purpose of this hearing is, and I have my views as to the ruling of the Courts.

The Master: All right. I have let you go just as far as I think any court should let you go.

Mr. O'Brien: And I think that when I come in here as I have done since the defence have opened up this case, and act as I have acted, and presented or brought in papers under subpoena *duces tecum* and opened the door and asked these questions, these questions not only but my own acts, not only sound strong so far as my duty is concerned with my responding to 42015
the call of duty of a public official, but at the same time also deal out the utmost fairness to a plaintiff.

The Master: All right. Now let us go ahead.

Mr. O'Brien: That is the point. I do not know whether it is lost in the heat of this argument, but the record is here.

The Master: Very well, now.

Mr. O'Brien: And when I ask this witness and he is barred from answering by an objection of

42016 the plaintiff, who misconceives his duty to his client—

The Master: All right. Now, I have let Mr. Addicks answer, and I am not going to permit any more inquiry on this line. I will give you an exception to my ruling.

Mr. O'Brien: Well, I will certainly except to your ruling, your Honor. There isn't any use in my subpoenaing the heads of these companies, if you are going to take the position that it would not make any difference anyway. I am going to act on the record as it is up to this minute.

42017 The Master: That is the thing to do.

Mr. O'Brien: I have not forgoten the emphasis which you laid on your views, and the way in which my examination into the question of the Standard Oil Company of New Jersey was acted upon by the Court, and I have got one view of the responsibilities of this plaintiff where there are common ownerships and where there are agency agreements, and I say to your Honor that these things alone, so far as this case is made up today, will mean the defeat of the plaintiff in this action.

The Master: Well, that is for them to worry

42018 about, not for you or me.

Mr. Ransom: All we need to do is to kill time.

The Master: Well, don't you help him by starting an argument.

Mr. O'Brien: Now, while I am killing time, if I am killing time I will kill a few other things, and I will kill the plaintiff's cause, and it is a fortunate thing that out of the many copies of the minutes of this proceeding that the plaintiff is purchasing they will have copies for some of the absent directors, to see the way that the stockholders' money is being wasted in this case.

The Master: Now, is there anything else that you want to ask Mr. Addicks?

Mr. O'Brien (continuing): And their cause sacrificed by stupidity.

The Master: In view of my ruling is there anything else you want to ask Mr. Addicks?

By Mr. O'Brien:

Q. Mr. Addicks, did you carefully check up the names of the men present at the meetings? We can assume that this was not done perfunctorily; this notation of their names as being present; that they were actually present, every day set opposite their names, 42020
and took part in the business of the Executive Committee as of that date?

A. I checked it, word for word.

Q. And the original minutes were made by you?

A. The original—not in every case, no, sir.

Q. Except in a few cases?

A. Cases when I was absent, and I think that— I don't remember the first year, 1905, whether I was present and made those up in an earlier year or not; I don't remember at the moment.

Q. Well, you have not had many vacations; I take it that we may assume, that you were not away from many of these meetings?

42021

A. I was probably away in August, or in case I was ill at other times?

The Master: August of each year; that is your vacation period?

The Witness: Usually August of each year.

Q. Now, how many of these meetings have been held in the National City Bank?

Mr. Ransom: Objected to as immaterial.

The Master: I will sustain the objection.

Mr. O'Brien: Exception.

Q. Has it been the practice of the Executive Com-

mittee or the Board of Trustees to meet in the National City Bank?

The Master: The objection is sustained, because the minutes themselves show where the meetings were held.

By the Master:

Q. What is 52 Wall Street, Mr. Addicks? I see a lot of these meetings were held at 52 Wall Street.

A. That, I think, was the old National City Bank Building, on the south side of Wall Street—on the north side of Wall Street.

42023 Q. Well, did the Gas Company have an office there?

A. The north side of Wall Street, opposite the present location of the City Bank.

Q. Did the Gas Company have an office there, or did you meet in the bank offices?

A. We met in an anteroom of the bank; I cannot say whose office it was, at this time.

Mr. Ransom: That was in the early years.

The Master: Yes, I see.

The Witness: That was in 1905 or 1906.

By Mr. O'Brien:

Q. So when we have on the minutes, these excerpts, mention of 55 Wall Street, we may assume that the

42024 meeting was held in that room you have just described?

Mr. Ransom: I object to that. He has not said anything of the sort.

The Master: 52 Wall Street.

Mr. Ransom: He referred to 1905, meeting in 52 Wall Street.

Q. I say, when you have met—

The Master: It was 52 Wall Street in 1905 and 1903.

The Witness: 55 Wall Street, I think, is on the opposite side of the street, in the present City Bank Building.

Q. When you state here that the meetings were held at 55 Wall Street, may we assume that all meetings were held in the room that you have described just now?

Mr. Ransom: He said nothing of the sort.

The Master: No, no.

The Witness: No.

The Master: Of course you cannot assume that. 52 Wall Street was where they met in this room.

Mr. O'Brien: I did not mention 52, your Honor; I made mention only of 55. 42026

The Master: I have mentioned 52. 52 Wall Street was the National City Bank.

The Witness: 52 Wall Street was the old National City Bank.

The Master: 55 Wall Street—

The Witness: Some of these meetings have been held in two rooms in that building, one located on the second floor and the other located on the 8th floor.

The Master: Yes, the National City Bank Building?

The Witness: Yes, sir.

The Master: The New National City Bank Building. 42027

The Witness: In both cases, the National City Bank Building.

The Master: Now I have let you get that on the record for what it is worth.

Mr. Ransom: The 8th floor is Shearman & Sterling's office.

Mr. O'Brien: I don't want Mr. Ransom's testimony.

Mr. Ransom: You want to get the facts.

Mr. O'Brien: I want him to tell whatever the truth is, and then we will get the facts.

The Master: The 8th floor was Shearman & Sterling's office?

The Witness: The 8th floor—

Q. How many of these meetings were held in Shearman & Sterling's office and how many were held down in the bank?

A. All of the meetings of the Executive Committee of the Consolidated Gas Company are now held in a room on the 8th floor, which is within space that
42029 also includes Shearman & Sterling's office. Formerly some of those meetings were held in an anteroom on the second floor of the City Bank itself.

Q. And Shearman & Sterling are the attorneys for the National City Bank?

Mr. Ransom: Objected to as immaterial.

The Master: The question is not allowed.

Mr. O'Brien: Exception. I am to assume, your Honor, that if I peruse the excerpts of minutes further and ask the witness as to the ownerships or interests of thet Board of Trustees or officers or Executive Committee in the companies or corporations or partnerships named, that your
42030 ruling will be the same?

The Master: If you add any other names to the question that I have ruled out, my ruling will be the same.

Mr. Ransom: You have let him answer the other question.

The Master: Well, I won't allow any more questions on it; put it that way, if you like.

Mr. O'Brien: I take an exception to your Honor's ruling, then.

Q. Was it the practice in the minutes to note the discussion had, or who partook in it, or who the makers of the motions were?

Mr. Ransom: Objected to as fully covered six or eight months ago.

The Master: Objection sustained. The minutes speak for themselves. The witness has said he has everything in the minutes, or in the copy here, that appears in the minutes.

Mr. O'Brien: Your Honor understands that I am not waiving my objection and my exception, my exception to your ruling keeping out the minutes?

The Master: I have not asked you to waive anything. 42032

Mr. O'Brien: By asking these questions as to these excerpts?

The Master: I have not asked you to waive anything.

Q. To illustrate my question, Mr. Addicks, you have here as to the meeting of April 8, 1919, the following; you call it an extract from the minutes of that date: "On motion duly seconded the purchase from the Michigan Stove Company of 166 Garland Hotel Gas Ranges and Appliances, at a cost of $9,049.89, was approved." Now, are we to assume that that was the only reference made on the minutes of that day to the subject? 42033

A. Yes.

Q. There is no preliminary statement of Mr. Gawtry or somebody else having presented a report upon this subject?

A. No, sir.

Q. It is the custom to abbreviate it in that way?

A. Yes, sir.

Mr. Ransom: I object to calling it abbreviated; it is complete.

The Master: I will allow it.

Mr. Ransom: The minutes speak for themselves.

Q. You never recorded dissenting voices?

Mr. Ransom: Objected to as covered six months ago.

The Master: I will allow that, too.

Mr. O'Brien: Exception.

The Master: I have allowed it.

Mr. O'Brien: Well, you cannot blame me for falling into the habit of taking exception, your Honor. It is such a rare thing to have you say "allowed" to me.

By the Master:

42035 Q. Did you record dissenting voices, Mr. Addicks?

A. If such dissent was made it would be recorded, your Honor.

Q. And would appear in this copy that you have prepared?

A. It would, sir.

By Mr. O'Brien:

Q. And the Rockefeller named on this list of Trustees is in each instance William Rockefeller?

A. Yes, sir.

Q. And the Mr. Garber is the attorney for the complainant company, a member of Shearman & Sterling?

42036 A. Yes, sir.

Q. Mr. Addicks, will you tell me in the case of these minutes that you have shown in these excerpts here today, how we are to distinguish between the supplies and materials that are purchased both for the complainant and the other companies, the affiliated companies, and those purchases that are confined to the Consolidated Gas Company?

A. No reference is made to purchases—no reference is made to affiliated companies with respect to pipe, for instance. Pipe may be purchased by the Con-

solidated Gas Company, and that pipe may be used for the affiliated company and charged to them, and that same thing may be true of other supplies such as ranges and so forth, they would be supplied to the affiliated company and would be billed through the Accounting Department.

The Master: There is no way of telling on these minutes that any particular supply was purchased for somebody else, is there?

Mr. O'Brien: There is some internal evidence, your Honor, and it is lacking in other instances. That is why I want to get the statement, so we 42038
will have no misunderstanding about it.

Q. Take your material like the ranges, you have covered; take the pipe, you have covered; take the lead and the pig iron and the wool and the fittings and the brass work, they would be bought for the combined companies, I assume?

The Master: The question is not allowed; it is fully covered.

Mr. Ransom: The minutes speak for themselves.

The Master: It is fully covered. I will not allow it. We have been all over it.

Mr. O'Brien: I will dispose of this matter in 42039
about two minutes, if you will just let me put these questions, your Honor.

The Master: Go ahead, I will give you two minutes.

By Mr. O'Brien:

Q. Is that a fact, Mr. Addicks?

The Master: Read the question.

Mr. Ransom: Objected to.

Q. May we assume, right through the excerpts of minutes here, that the material was purchased for the combined companies?

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Mr. Ransom: Objected to.

The Master: I will allow it.

Q. (Continuing.) Except where Maxwell cars were bought?

Mr. Ransom: That has been fully covered. It is just opening up a lot of new matter that has been gone over.

The Master: I am going to give Mr. O'Brien two minutes, if you will not interrupt. Go ahead.

Mr. O'Brien: Excluding, of course, hiatuses.

Mr. Ransom: Leaving out football tactics.

42031 Q. (Question read as follows:) "May we assume right through the excerpts of minutes here that the material was purchased for the combined companies, except where Maxwell cars were bought?"

Mr. Ransom: Objected to.

The Master: That is not a fair question. I will not allow that question.

Mr. O'Brien: I will strike out the Maxwell cars, and ask the witness—

By the Master:

Q. Is it true that as to classes of property such as pipes, stoves, oil, coal and some other items of a similar character, purchases referred to in these minutes were made not alone for your own use but possibly for the use of the affiliated companies?

42042 A. I think that is true of all that you mentioned, your Honor.

Q. And perhaps some other items?

A. There may be some other items as well.

By Mr. O'Brien:

Q. Is it true of the lead wool and brass fittings and hardware?

A. It is true of the lead wool, but I do not think necessarily so of the brass fittings; I will not be positive as to that.

Q. Well, take your valves and discs, and all of the paraphernalia that enters into the works equipment: that is bought for the combined companies?

A. I do not think that necessarily would follow, so far as the supplies for the works themselves, like valves for generators are concerned.

Mr. Ransom: That was fully covered six months ago.

The Master: I think I will allow it. Two minutes will not make much difference.

Q. Well, it is true of all the appliances, is it, merchandise in connection with the appliances business? 42044

A. I think it is true of the gas ranges, with the exception probably of the Central and Northern Union; that is to say, I am referring now to our standard pattern of range.

Mr. O'Brien: Well, I will just ask this one question and close that subject. I want all the information you can give me in the answer, so that I will have the record complete.

The Master: What page?

Mr. O'Brien: Take it on July 11, 1916.

The Master: Just wait a minute.

Q. "The officers reported that under the authority granted by this committee it was prepared to propose to award contracts for overhauling mains and services at cost of labor and material furnished by contractor plus 10 per cent, as follows: East 4th Street, Second Avenue to Broadway, to Thomas Crimmins Contracting Company; Broadway, 92nd to 121st Street, to Hickey Contracting Company; East 96th Street, Fourth to Madison Avenues, to Sterling Contracting Company. On motion duly seconded said proposed contracts were approved." 42045

Now, may we assume that that was done for the

combined companies, or for some of the affiliated companies?

Mr. Ransom: Objected to, as the entry speaks for itself.

The Master: I will allow that one question. That is all that Mr. O'Brien is going to have.

A. In the overhauling of the mains and services under those contracts it would depend on what was found on those mains or services, as to what companies would be included. No leaks or no defective services might be found on the Consolidated, whereas
42047 they might be found on the Standard or the New Amsterdam.

Q. Well, in other words you would make the contract, and after the work was done and after the ground was turned up you would determine who ought to pay for it?

A. That would have to be determined by the accounting department, as to what judgment should be made, depending on what was found in those particular cases.

Q. Now—

The Master: No, no.

Mr. O'Brien: This is the finale, your Honor, on this subject.
42048

The Master: No, you said the question before the last was the finale, and I let you have one more, and I have given you five minutes instead of two.

Mr. O'Brien: That is getting down to a pretty close ruling.

The Master: No, it is not.

Mr. O'Brien: I will ask this final question—

The Master: Well, I will hear your question.

Mr. O'Brien: You know, it is getting dreadfully hot here; they have got it over 76 degrees

42049

here; reduced to 60 degrees it would be a little bit more comfortable.

Mr. Ransom: If you get Birdsley to figure it it would be cold.

The Master: What is your question? Let us hear it.

Q. The question is this: Is there any notation made in the minutes of the Executive Committee to indicate whether the supplies or materials to be purchased under a resolution were for the complainant company or for the combined companies or some of them?

Mr. Ransom: Objected to as already covered. 42050

The Master: I will rule it out, upon the ground that the minutes speak for themselves, and the subject is already fully covered.

Mr. O'Brien: You mean these minutes?

The Master: Yes.

Mr. O'Brien: The excerpts of the minutes?

The Master: Yes.

Mr. O'Brien: Well, they are not very clear on the subject, your Honor.

The Master: Well, clear enough, I think. I will not allow it.

Q. Mr. Carter, do you know Mr. Thomas' signature (handing witness paper)? 42051

Mr. Ransom: Mr. Carter?

Mr. O'Brien: Mr. Addicks, pardon me.

Mr. Ransom: I will admit that is his signature.

Mr. O'Brien: I offer in evidence a petition of the complainant company, submitted to the Public Service Commission for the First District, February 3, 1920, verified by C. G. M. Thomas, Vice President of the complainant company.

Mr. Ransom: May I see it?

The Master: Show it to Mr. Ransom. What are they, two papers you are offering?

42052

Mr. O'Brien: One is a copy, I assume.

Mr. Ransom: Of course this is an application which was made by this company to the Commission. I do not believe it has any bearing upon any issue in this case. I shall object to it as immaterial and irrelevant to any issues in the case, relating to matters entirely outside of the questions arising in this case.

The Master: How is it material, Mr. O'Brien? What does it tend to prove or disprove?

Mr. O'Brien: Your Honor, that indicates that there is about nineteen million dollars of funds
42053 other than the proceeds of the complainant's stocks and bonds, out on loan to affiliated companies, which amount is exclusive of investments of the complainant company in the stocks and bonds of the affiliated companies.

Mr. Ransom: A marvelous statement for any counsel—

The Master: What does that prove, so far as this issue is concerned?

Mr. Ransom: No such thing appears from this.

Mr. O'Brien: I had better read it to you.

The Master: What does it prove so far as this issue is concerned? What does it show?

42054 Mr. O'Brien: It has a very serious bearing upon this case.

The Master: I am trying to find out how.

Mr. O'Brien: If there is nineteen million dollars of that kind owned by this company, it is incumbent upon this plaintiff to show what parts of that money are the earnings of the gas business of the complainant.

The Master: That is the theory on which you think this is material?

Mr. O'Brien: What fund it came from, what the sources of that money are.

42055

The Master: That is the only thing?

Mr. O'Brien: And what bearing it has upon the rate base in this case.

The Master: Objection sustained.

Mr. O'Brien: Also it has a bearing upon the losses, if there have been any losses, in the gas making industry during any part of the years 1917, 1918 and 1919.

The Master: Objection sustained.

Mr. O'Brien: Of course, that it shows excess earnings in the past cannot be denied.

Mr. Ransom: It does not show anything of the sort. It is denied.

42056

Mr. O'Brien: Now, Mr. Ransom, I am going to show you that it does show anything of the sort.

Mr. Ransom: You won't do it.

Mr. O'Brien: I will try to handle you just as lightly as Mr. Maltbie did, but no man can controvert with me when I am right.

The Master: Mr. O'Brien—

Mr. O'Brien: Now, your Honor, whether you put it on the record or not is for the moment immaterial, because Ransom has made a statement here that I am incorrect in what I have set forth to you.

42057

The Master: Just one minute. If you want to have the paper that you have offered marked for identification it can be done. I do not want to hear any further argument about it. The objection is sustained.

Mr. O'Brien: The—

The Master: I said, do not argue it, or read any part of it now. You can mark it for identification.

Mr. O'Brien: I won't read any part of it now, your Honor.

42058

The Master: If you want to mark it for identification you may.

Mr. O'Brien: Just a minute, please.

The Master: You are through with Mr. Aldricks, I suppose, are you?

Mr. O'Brien: Not yet. Let him linger awhile more. I want to ask him a few questions.

Mr. Ransom: Delay, linger and wait. He will have trouble finding any such thing in that paper. He might as well say a billion; why didn't he say a billion?

Mr. O'Brien: In reference to the statement
42059 made by Mr. Ransom, and without giving the paragraph—

Mr. Ransom: I object to his reading it.

Mr. O'Brien: I am going to call your Honor's attention—

The Master: No, I told you, Mr. O'Brien, I did not want to hear any more about it.

Mr. O'Brien: I am not going to read the paragraph—

The Master: The stenographer will take nothing more.

(Further discussion off the record.)

Mr. O'Brien: Will you strike Mr. Ransom's
42060 statement from the record, to the effect that I have incorrectly stated what was in this exhibit?

The Master: I will let you mark it for identification, so it can be printed in the record for identification, so that if it is at all important the Court can see what it is. That is the reason I am letting you mark it for identification.

Mr. O'Brien: I will ask that this paper be marked for identification; paper entitled, "Public Service Commission, First District, State of New York, In the matter of the Application of

the Consolidated Gas Company of New York Under Section 69 of the Public Service Commission Law, Etc." Original petition, Shearman & Sterling, attorneys for petitioner, 55 Wall Street; dated January 31, 1920, signed by the Consolidated Gas Company by C. G. M. Thomas, vice president, and verified by Mr. Thomas on January 31, 1920, before F. C. Gordon, a Notary Public.

The Master: All right, mark it for identification.

Mr. O'Brien: Filed or submitted to the Public Service Commission for the First District, February 3, 1920. 42062

The Master: Mark it for identification.

The paper referred to was marked Defendants' Exhibit AA-514 for identification.

Mr. O'Brien: Without waiving my rights under the exception which I took to your Honor's ruling, refusing or denying the admission in evidence of the minutes of the complainant company from January 1, 1905, to January 9, 1920, I now offer without assenting to the correctness of any statements made therein or the reasonableness, economy, the wisdom or the prudence of any contracts referred to therein, but as admissions of all that they on their face admit, the excerpts from the minutes of the complainant company as testified to today by Mr. Addicks. 42063

The Master: Now, do you want to offer the copy furnished you, or do you want to have marked the original?

By Mr. O'Brien:

Q. Mr. Addicks, the copies furnished to me. I now hand you and ask you if they are correct copies of the original which the Master now has in his hand?

42064 Walter R. Addicks, Direct.

A. The original which the Master now has in his hand has my initials on each one, and I believe these to be exact copies in every particular.

Q. Will you look them over, so we will not have any mistake? Miss Ryan and—what was the other name?

A. Miss Ryan and Miss Curran.

Q. (Continuing.) And Miss Curran may have made mistakes.

A. I want to say to you I have already looked these over, and I believe them to be correct. I have per-
42065 sonally compared them with the original and I believe they are identical in every respect.

Mr. O'Brien: Then, with the limitations I have already stated, your Honor, and without waiving my rights under the exceptions I have already taken in the case, I offer the original excerpts.

The Master: Mr. O'Brien offers four volumes, so-called, one endorsed on the cover, January 1, 1905, to June 26, 1906, inclusive, the second one being endorsed July 3, 1906, to November 26, 1912, inclusive, the third December 3, 1912, to January 6, 1920, inclusive, the fourth having no endorsement but being the list of those present
42066 at the various Executive Committee meetings. They are received in evidence; the first section, which has the dates January 1, 1905, to June 26, 1906, inclusive, having the exhibit mark.

The four volumes were received and marked Defendants' Exhibit AA-515.

The Master: Anything else, Mr. O'Brien?

Mr. O'Brien: That will be all of Mr. Addicks at this time.

The Master: All right, Mr. Addicks. Anything else?

Mr. Clark: I would like to offer in evidence the copy which Mr. Howard used, of the notes on utility of lands which formed the basis of his tax exhibit.

The Master: Very well, I will receive it.

Mr. Ransom: It is objected to as incompetent. It is the Maltbie basis, which he required these young men to use.

The Master: That is why I wanted it in. Received as Exhibit AA-516.

Mr. Ransom: Exception. The basis has been shown to be utterly specious, out of the air. 42068

Paper referred to was received and marked Defendants' Exhibit AA-516.

ROBERT A. CARTER recalled.

DIRECT-EXAMINATION BY MR. CLARK:

Q. Mr. Carter, do you remember the circumstances which caused the company, or led the company to set up the contingency fund in May, 1905, 10.89 per cent?

The Master: Have we not been over all that? 42069

Mr. Ransom: Objected to as fully covered.

Mr. Clark: Not the reasons which led them to set it up, no, sir.

The Master: I will not take it. Objection sustained.

Mr. Clark: I take an exception. I want to show by Mr. Carter that it was set up to take care of the removal of the plants to Astoria.

The Master: No, I have got enough of this ancient history. Objection sustained.

Mr. Ransom: It was fully covered several months ago.

Mr. Chambers: I think it is very important.

Mr. Clark: There has never been any testimony why it was set up, what the contingency fund means, or anything else.

The Master: Well, I will not take it now. Objection sustained.

Mr. O'Brien: But, your Honor, this is a statement made under oath, of the witness, as to the purposes, and it has not been covered by anything
42071 in this case so far.

The Master: I will not take it now. Objection sustained.

Mr. O'Brien: You mean it is too late?

The Master: I will not say whether it is too late or too early. I will not take it now. I say the subject has been sufficiently covered.

Mr. O'Brien: Exception.

Mr. Clark: I except to your Honor's ruling.

The Master: That is the thing to do.

Q. Mr. Carter, was it not the fact that one of the principal considerations leading up to the establishment of this fund was the projected removal of the plant
42072 of the complainant company to Astoria?

Mr. Ransom: Objected to as fully covered.

The Master: I will take that one answer, if Mr. Carter can give it, and get done with it.

Mr. O'Brien: Oh, I would not rush this, your Honor. This is too important to say you will take one answer and cut out the rest.

The Master: Mr. Carter, can you answer that question?

Mr. O'Brien: Exception to your Honor's restrictions.

The Witness: This contingent—

The Master: No, can you answer that? Just hear that again. I just want to get a yes or no answer.

(Question read by stenographer.)

The Master: Meaning this contingent fund of 1905.

Mr. Clark: It was started in 1905 and continued until 1917.

The Witness: There was no projected removal of the plants to Astoria.

The Master: Well, is it your anwer, then, that 42074
that was not the principal reason for setting up the contingency fund?

The Witness: I think that the possibility of removing the plants to Astoria may have been considered in connection with that.

By Mr. Clark:

Q. Well, refreshing your recollection by your testimony here at page 876 of the record in the old case, would you say that that was one of the principal considerations for the setting up of this fund?

Mr. Ransom: Objected to. It does not appear that his recollection needs any refreshing.

The Master: What page? 42075

Mr. Clark: Page 876.

Mr. Ransom: It does not appear that his recollection needs any refreshing.

The Master: Oh, well, look at it, Mr. Carter. We will get over this ancient history in a minute.

Mr. Ransom: This is modern, compared with what we had this morning.

The Master: Yes, but still those things are comparative. I remember when I was in Rome they spoke of things as modern that were only

42076 Robert A. Carter, Direct.

2,000 years old. Nothing was ancient unless it got beyond 2,000 years.

Mr. Chambers: Just a little sum of eleven millions here, that is all.

Mr. Clark: They have still got it, if your Honor please, and they have not moved yet.

The Witness: That confirms what I have said, that the possibility of our being obliged to remove our plants from the Borough of Manhattan was among the things considered in connection with that contingent reserve, which was

42077 disallowed in the subsequent proceedings, or in those proceedings.

Q. What was disallowed?

A. The contingent reserve.

Q. Was one of the principal considerations—

The Master: I will not take any more. The witness has answered it. I will not take any more on that subject.

Q. Can you state whether or not, Mr. Carter, one of the considerations that led the company to set up this contingent reserve was the fluctuation in the cost of material?

Mr. Ransom: Objected to as fully covered.

42078 The Master: How many more items are there that you want to ask about on that?

Mr. Clark: Why, I think that is the only one.

The Master: Do you think that is the end of it? Then I will allow it.

Mr. Chambers: That is the only one he said.

The Master: All right.

Mr. Ransom: Exception.

A. I don't recall the original resolution in that regard.

Q. Refreshing your recollection from page 875, can you state whether that was your opinion in 1906, as

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to the considerations that led to that—page 875, and the bottom of the next page?

A. I stated, as shown by this record, page 875, that among the considerations was fluctuation in the cost of material, liability to serious and expensive accidents, having in mind a very grave one which occurred in Boston not long ago—at that time the testimony was given—which cost the company a great deal of money to settle in the way of damages, and so forth, of the contingent fund which I stated was disallowed in the proceedings.

42080

Q. And prior to 1905, prior to May, 1905, you had a depreciation fund on your books.

Mr. Ransom: Objected to. It has been fully covered.

The Master: Objection sustained.

Mr. Clark: Exception.

Mr. Ransom: It is an incompetent method of proving it

Q. Did you continue to carry the depreciation fund after 1905?

Mr. Ransom: Objected to. It has been fully covered.

The Master: Objection sustained.

Mr. Clark: Exception.

42081

Q. Was this contingency fund which was set up in May of 1905 in addition to a depreciation fund, or did it take the place of such a fund?

Mr Ransom: Objected to.

The Master: Objection sustained.

Mr. Ransom: The defendants have gone all over this at least twice before.

Mr. Clark: Exception.

Q. Was it not a fact that the company considered the loss incident to the removal of your plant to Astoria would be something approximating $10,000,000?

42082 Robert A. Carter, Re-direct.

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Clark: Exception.

Q. Is it not a fact that the amount of the actual depreciation of the complainant company from 1884 to 1905, was $4,770,982.72?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Ransom: And fully covered by the defendants on a number of occasions before.

Mr. Clark: Exception. That is all; your
42083 witness.

Mr. Ransom: Just one question.

CROSS-EXAMINATION BY MR. RANSOM:

Q. When you spoke of the possibility of being obliged to remove your plants, or some part of them, to Astoria, did you refer to the possibility of being obliged by municipal action?

A. Yes.

Mr. Ransom: That is all.

The Master: That is all. Anything else?

RE-DIRECT EXAMINATION BY MR. CLARK:

Q. By Municipal action, Mr. Carter, do you mean direct ouster by the municipal authorities? Did you
42084 ever expect to experience that?

A. Yes, it was possible, and during the period of Mayor Low's administration it was very plainly intimated that our plants in the Borough of Manhattan were deemed objectionable, and it was plainly intimated that we might be obliged to remove them from the borough.

Q. But you were not obliged to remove them?

A. No, we were not.

The Master: That is all, Mr. Carter. Anything else now, gentlemen?

Mr. Clark: I have no witnesses at this time.

42085

The Master: Have you anybody else, Mr. Clark? Any other proof to offer?

Mr. Clark: Not at this time; no, sir.

The Master: What do you mean, not at this time?

Mr. Clark: Why, just that—that I have no more.

The Master: Have you anything else to offer, Mr. Chambers?

Mr. Chambers: I have no more witnesses this afternoon.

The Master: What do you mean this afternoon?

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Mr. Chambers: I will have some little more testimony to offer, I think, if I get a chance.

The Master: No, I am not going to reopen the case.

Mr. Chambers: If I have an hour or so—

The Master: We will wait until Mr. O'Brien comes in and see if he has anything; if not, we will go into rebuttal.

Mr. Chambers: I would like a little opportunity, not having had any. I would like to state on the record that we have been in court practically every day, holidays included, with the exception of the short time that the Master went down to Florida, in presenting our case; and I for one would like a few days to check up and see if we have covered all our proof. Having been kept in court here from 9:30 to 6:00 every day, and holidays, has not given me an opportunity to do anything but stay here in court.

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Mr. Ransom: I wish the record to show how little Mr. Chambers was in court during that time.

Mr. Chambers: I have been in court all the time of that time. What do you mean? Do you

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want to make a false statement? The Master knows I have been in court all the time.

Mr. Ransom: Part of the time, part of the days.

Mr. Chambers: All the days, every day.

The Master: I think it is only fair to comment—

Mr. Ransom: Do you mean that he has been here until six every day, and here at 9:30?

The Master: Yes, I think he has been here most of the time. I think with very few exceptions he has been here from the beginning until

42089 the closing of court.

Mr. Ransom: I have a record of the time that this court has been in session, and this effort to create the impression that we have been able to take testimony here from 9:30 in the morning until 6:00 o'clock, week days and holidays, is not in accordance with the facts.

Mr. Chambers: It is in accordance with the facts, and the Master knows it.

The Master: Anything else, Mr. O'Brien?

Mr. Chambers: No, now, you have got to give me a chance.

The Master: I have made the record for you

42090 so far as this dispute is concerned. Let us stop now. Anything else, Mr. O'Brien?

Mr. Chambers: You did not make it strong enough.

Mr. O'Brien: Will you let the stenographer read what he has here?

The Master: No, he has nothing except an argument between Judge Ransom and Mr. Chambers, in which Judge Ransom stated that Mr. Chambers had not been here all of the time.

Mr. Chambers: I state that I have no more proof to offer now, and that I have some proof which I believe will be ready in the morning.

42091

The Master: What is it?

Mr. Chambers: I was going to call Mr. Hine on a matter. Perhaps it won't be necessary if I can see him.

The Master: For what did you have any possible notion of calling Mr. Hine again?

Mr. Chambers: On some information he furnished to Dr. Weber.

The Master: What is it?

Mr. Chambers: It is the question of some repairs to holders. If you can see that he testified those repairs were reasonable in his opinion, why, then I won't need to call him on that.

42092

The Master: Whose opinion?

Mr. Chambers: Mr. Hine's.

The Master: I would not take his opinion on that anyway. Mr. O'Brien, have you anything else?

Mr. O'Brien: Don't you think I have done a good day's work today?

The Master: Yes. Have you anything to offer?

Mr. O'Brien: Not tonight.

The Master: Go on with rebuttal.

Mr. Chambers: Exception to your Honor's ruling.

42093

Mr. O'Brien: You take my breath away, your Honor. Have you made some statement since I left the room?

The Master: No, I simply wanted to know if the defendants had more proof to offer; if not I will go on with the rebuttal.

Mr. Chambers: I said I had some proof to offer, but not now.

Mr. O'Brien: When we are through with the witnesses I am going to ask about three weeks' time to go into these accounts.

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The Master: Why don't you ask for the time now? You have nothing else to offer, have you?

Mr. O'Brien: We will have something, I think, in the morning.

The Master: What?

Mr. O'Brien: Do not get excited, your Honor.

The Master: I am not excited. What?

Mr. O'Brien: Don't get excited because I am going to offer some testimony.

The Master: What?

Mr. O'Brien: I can tell better in the morning, after I confer with the counsel for the defendants.

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The Master: Go on with rebuttal.

Mr. O'Brien: What I want to say to your Honor about this three weeks is this: We will need at least three weeks to finish the preparation of the defendants' case in the direct—not surrebuttal. We will need that to go over books, papers, records that have not been at our disposal.

I know your Honor will come back and say we have had access for blank X Y Z number of months, free access, to all the underlying data. That is a matter of controversy between ourselves and the complainant, and we have not had that time. We are going to ask for the time and your Honor will make such ruling as you see fit. But this company and its business, the intricacy of the questions involved, the extent of the investigation, the variety of the questions of fact that have arisen, the almost interminable extent or limit of the matters to be combed out, certainly require more time than we have been allowed.

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Since we began the defense's case it has been a record of 9:30 to 6:00 o'clock practically every

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day that we have been in court. Before that time, for almost all of the time that the complainant's case was being put in, their general books of account, their operating ledgers, their operating journals, their sundry creditors' and their sundry debtors' blotters, their cash accounts and various other of the principal books of account, have been in court, where investigators could not reach them and where there has not been an opportunity to go over the various matters involved.

As a very meagre illustration of one of the things I have in mind, only four or five days ago 42098
you said to me something about going over underlying data that I requested the complainant to give or to produce in court under a subpoena *duces tecum*, under a description I thought accurately described what I wanted, and you declined to compel them to bring it in under subpoena and told me to have somebody go down there and get out what we wanted or to tell them what we wanted definitely.

Now, at the pace we have been going, from 9:30 until 6:00, with the hours afterwards, such as we have been able to get together, to prepare enough work for the trial of the morrow, it has 42099
been an impossibility to properly prepare the case as we would have it to protect the interests of the defendants. It has been absolutely superhuman to be able to conduct a trial under such circumstances, and I am not going to let the interests that I represent with my colleagues here for the defense—I am not going to let that pass without the proper investigation that is necessary.

I, therefore, at this time, if you want it now instead of tomorrow morning, ask and insist that

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we be allowed a minimum of three weeks to make the continued investigation of books and records and such other matters in connection with the complainant company as are necessary for us to properly prepare our defense.

The Master: Application denied.

Mr. O'Brien: In this connection I want to say to your Honor that back in the early days of December, when at that time it looked as though the complainant was going to be through with its case, there was a tentative arrangement made, on the assumption, of course, that they were to finish along on the 7th, 8th or 10th, that we would have the intervening time between then and the 6th day of January in order to prepare the defense as we then saw it. Now, through the developments that came about, all of that time was used up and we did not have it; you did not get away to Cuba, we did not have the time; there was correcting in the end of the stenographer's minutes—and so right down to the holiday itself, we were engaged in this trial.

42101

Now, what we ask is but fair. Your Honor has indicated very firmly to the complainant, in speaking about the prospective program of this case, that you are going away on the 4th day of March, to be gone for three weeks, and that you will go no matter what happens to the case. I, therefore, ask at this time that you go away tomorrow—that you go away tomorrow, and that we have that time in which to do what we best can under all these circumstances and exigencies of the situation to complete the case so far as the defendants are concerned.

42102

Now, this is a momentous case. Anyone that ever thought that he could finish this case in a few months, if properly examined by the right

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kind of an alienist, would be a one-hundred per cent fit candidate for Ward's Island. This is too momentous a matter. It involves the interests of the complainant and it involves the interests of the defendants but whatever may be said on the record as it has gone by, there should be a showing that meagre minimum request at this time of the defendants has been honored by the Court.

On behalf of myself, and I think I can speak for my colleagues, the Public Service Commission's representative and the Attorney General's representative, I now ask that there be an adjournment granted, to be taken for three weeks, so that we may get the benefit and advantage of that vacation which your Honor needs, and may apply it to the benefit of the defendants in that way, and at least be able to put in such further evidence in behalf of the defendants as we may hurry along, after the superhuman effort that we have made since we have come into this case.

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The Master: The Master being satisfied that the counsel for the defendants at this time have no further proof to offer, and being satisfied—

Mr. Chambers: No, I overlooked something.

The Master: I am going to finish what I want to say, Mr. Chambers.

42105

Mr. Chambers: I overlooked something.

The Master: You can wait (continuing). And being confirmed in the impression he had by Mr. O'Brien's application for an adjournment of three weeks, I shall direct counsel for the complainant to proceed with his rebuttal proofs. Mr. Chambers, you wanted to say something?

Mr. Chambers: I want to say that I had no idea that here, at five o'clock, or five-twenty, you were going by main strength to order our side closed.

42106

The Master: I am not doing it by main strength.

Mr. Chambers: And I protest.

Mr. O'Brien: Let me say here—

The Master: Do not interrupt.

Mr. O'Brien: Suppose that one of the attorneys in this suit breaks down, who is going to take the responsibility?

The Master: Do not interrupt Mr. Chambers.

Mr. O'Brien: If one of the attorneys in this case breaks down, by reason of the strenuous work he has gone through isn't the responsi-

42107 bility yours? Can it be pushed off on anybody else, either—the candidate from the rural country here, Chautauqua County? No, I am talking seriously, your Honor. You may smile about it, but I say it is a serious proposition. I do not know anybody, no matter how strong or virile or robust he may be, can ever be counted on to go through this strain that we have gone through from 9:30 in the morning to 6 o'clock, and then 9:30 to 6 o'clock again on the morrow, trying to carry the burden and responsibility of the people in this case, which is beyond the jurisdiction of any court of jurisprudence in this country.

42108 It is a serious proposition; and I say further, if we are going to be driven further in this case, going on with the same hours, doing the work we have been compelled to do, the responsibility is yours. Not alone for the result of the litigation, not for what may come in the higher courts in the litigation, but what may come to us personally.

The Master: I will assume the responsibility. Now finish your statement, Mr. Chambers.

Mr. Chambers: I want to say that I did not think you really meant to close the case up in this

42109

summary fashion without giving us a little opportunity of checking up and seeing what additional proof we had to offer. For instance, this very day there occurred a question here which I have asked to strike out and which I think is incompetent—the question concerning Mr. Yalden. Immediately after that question was propounded and I realized the importance of it, I sent to Albany for a certified copy of the certificate of Mr. Yalden, wherein he was admitted by the regents of this state to practice as a certified public accountant, this information having been given to me by Mr. Teele himself. He said Mr. 42110
Yalden was a certified public accountant, and on that knowledge I have sent up there, and, of course, I want the opportunity of offering in evidence the certificate of Mr. Yalden, in view of the unwarranted, unjustified and uncalled for statement or question propounded by counsel for the other side.

The Master: I will give you that opportunity when it comes.

Mr. Ransom: If you will get that certificate I will offer it.

The Master: I will give you that opportunity when it comes.

Mr. Chambers: That is one thing; there are 42111
others.

The Master: What else?

Mr. Chambers: Here at 5:20, when we have presented testimony all day, I am not prepared to say there are not other things of vast importance to the people we represent, and we should have a little time in our exhausted condition to see what additional testimony we should offer. Now, we have not had an opportunity to sit down and think it over. I do not care a rap what counsel

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said—what Mr. Maltbie said about him yesterday was more than justified, and when he says that I have not been here in court every day—

The Master: I have disposed of that.

Mr. Chambers: Every day from 9:30 to 6—

The Master: I have disposed of that, Mr. Chambers.

Mr. Chambers: We'll let will say to the Appellate Court I was not here. I have been here.

The Master: I have spread on the record the statement that you have been here nearly all of that time.

42113 Mr. Chambers: Oftentimes I have not had sufficient time to get a decent lunch because I had to talk with witnesses during lunch hour.

The Master: I will go further than that. My recollection is that since I resumed the hearings on the 10th—

Mr. Chambers: The 5th of January.

The Master: No, since the 10th of February.

Mr. Clark: That is right.

The Master: My recollection does not go back into January.

Mr. Chambers: I will tell you the day that you resumed when you came back. You adjourned to the 11th and we thought we were going to have until the 11th, and that was cut down.

42114

The Master: To the 9th.

Mr. Chambers: The morning of the 9th.

The Master: My recollection is very clear that I have been sitting as nearly as may be from half-past nine to six.

Mr. Chambers: Yes, and you sat one evening.

The Master: Not always beginning at half-past nine, not always running to six; and I sat one evening from eight to half-past ten, most

of which time was wasted in speech making that I do not recall. But at any rate you have been here. 42115

Mr. Chambers: Always here.

The Master: As far as my recollection goes, almost continuously since the 9th of February. Going back of that I think you were there practically all the time.

Mr. Ransom: During the time the court was in session?

Mr. Chambers: I was there all day, and something happened one day, and we went to Mr. Maltbie's office with your consent, one-half day. 42116

The Master: That is all he has claimed. As far as my recollection goes, Mr. Chambers has been here practically all the time.

Mr. Chambers: Anybody says to the contrary says what is not true.

Mr. O'Brien: We have been here from 9:30 until 6, approximately, not only since we came up here, and not only since February 9th, but your Honor will remember that a great many days when we were in Room 401 of the Post Office Building our sessions were late and sometimes we ran as late as 6:30. 42117

The Master: Yes, I remember one night we ran until after seven o'clock to finish up some Deputy Tax Commissioners.

Mr. Chambers: There is no one can understand how counsel can keep their case going with such exacting hours as that—a case of such importance.

The Master: Now, I have directed counsel for the complainant to proceed with his rebuttal. When you get your certificate of license of Mr. Yalden, I will let you put it in.

Mr. Chambers: There may be other things like that.

The Master: If there is anything else that I think you really want to put in—

Mr. Chambers: Yes, there is, another witness. I did not want to tell you about it, but I think he can be ready tomorrow morning.

The Master: All right, if there is anything else that I think counsel for the defendants are really earnest and sincere in wanting put in, I will listen to what their application is, and, if I
42119 think it is of any importance in this case, I will let you put it in. The rebuttal will proceed.

Mr. Clark: Exception to your Honor's ruling.

Mr. Chambers: I take an exception.

Mr. O'Brien: Exception.

The Master: Proceed, Judge Ransom.

WALTER R. ADDICKS, recalled by complainant in rebuttal.

DIRECT-EXAMINATION BY MR. RANSOM:

42120 Q. Mr. Addicks, is the complainant company paying less for gas oil in 1920, than in 1919?

Mr. O'Brien: I object to that as incompetent, irrelevant, immaterial and not rebuttal.

Mr. Chambers: I object.

The Master: How is it rebuttal, Mr. Ransom?

Mr. Ransom: Because they have undertaken to put in proof to indicate, and they no doubt will claim a lower price from 1919, on, than the company was paying in 1919.

The Master: I do not think this is rebuttal.

Mr. Ransom: I further call attention to the fact that Mr. O'Brien has offered in evidence the purchases of materials and supplies other than coal and oil down to January 6, 1920.

The Master: I won't take it on that ground.

Mr. O'Brien: Your Honor did not accept my offer, I am sure.

The Master: I have made a ruling.

Mr. O'Brien: I want to have that clear.

The Master: But I have ruled this out—as rebuttal.

Mr. Chambers: Yes, the objection is on the 42122
ground it is not rebuttal.

The Master: Yes, it is not in my opinion rebuttal.

Mr. Ransom: I press the question.

The Master: Well, I press my ruling.

Mr. Ransom: Do you sustain the objection?

The Master: I do.

Mr. Chambers: It is a tie so far, a deadlock. But I think the Master got the best of it.

The Master: It cannot be a deadlock when I have the last say.

Mr. Ransom: Exception.

Q. Mr. Addicks, since you last testified on the 42123
stand sometime in the month of August or September, has there been any decrease in the price paid by the Consolidated Gas Company for gas oil?

Mr. Chambers: Same objection on the ground it is not rebuttal.

The Master: I will sustain it on that ground.

Mr. Ransom: Exception.

Q. Mr. Addicks, on January 9th Mr. O'Brien asked you to prepare excerpts from the committee minutes showing entries in the Executive Committee minutes with respect to the purchase of all materials down to

that date. Have you prepared in addition to those comprised within Defendants' Exhibit AA-515, put in evidence this date, correct excerpts from the committee minutes showing entries from the date September 9th, 1919, down to and including January 9th, 1920, concerning coal and oil?

The Master: I do not quite get the point of that question.

Mr. O'Brien: Same objection, your Honor.

The Master: How is it rebuttal?

Mr. Ransom: Well, I am asking the ques-

42125 tion.

The Master: Sustained, as rebuttal. If counsel wants to make an application to offer proof on matters not covered, for the first eight or ten months of 1919, I will entertain that application, but if this is offered as rebuttal the objection is sustained.

Mr. Ransom: If there is any claim on the part of the defendants that on the basis of any proof which they have offered this company should or did obtain a lower price for gas oil for the year 1920 or the balance of the year 1919, or for the ten months ending October 31st, 1919—if there is any such claim, it seems to me this is rebuttal.

42126

The Master: Well, I am not going to ask them what they claim the evidence shows. I am simply going to take proof in rebuttal of proof that was offered. That is, the stenographer should note, unless I grant an application to extend the case under the equity powers of the Court. That application has got to first be made.

Mr. Ransom: I do not regard the equity rule as one which involves the concept of the law courts with respect to rebuttal and sur-rebuttal and the like. I think that is your Honor's mis-

42127

apprehension in this respect. They have offered a great deal which, if it has any bearing at all in the case—which I did not think it did, and pointed out at that time—if it has a bearing, it must be the basis for a contention with respect to the future.

Mr. O'Brien: Will your Honor just hear me a minute on that?

The Master: No.

Mr. O'Brien: I want to call your attention to how frequently he made his objections.

The Master: No, stop it. I will not receive this tendered proof as rebuttal proof.

42129

Mr. Ransom: Well, I will withdraw Mr. Addicks at this time.

Mr. Clark: Is that all for Mr. Addicks?

The Master: Yes.

Mr. Chambers: While we are waiting for the complainant, I suppose properly, I would like to renew my—although it is against my wishes and judgment in view of the arbitrarily closed presentation of the defendants' proof, I want to reserve the right to project somewhere my fourteen grounds, fourteen points and grounds for dismissal, and then some affirmative ones.

The Master: They are properly made after all the evidence is in.

42129

Mr Chambers: Well, perhaps so. With that understanding, if I have not lost any rights in that regard, I will be satisfied.

The Master: You could not make any motions now.

Mr. Chambers: Wouldn't you want to dismiss the complaint on our good showing, without wasting further time?

Mr. Ransom: I think I would really save time if I had until tomorrow morning for this.

The Master: I have heard that story from the defendants.

Mr. Chambers: And put on the record that counsel for the complainant is not ready.

Mr. Ransom: I think I can afford to waste 15 minutes; it is the first time.

The Master: I have not done anything such as not give you time to get your papers or confer with witnesses.

Mr. Ransom: I will call Mr. Carter.

The Master: Mr. Carter is called in rebuttal.

42131 Mr. Ransom: Perhaps, just to complete my record, I would like to put Mr. Addicks on for one other question on that.

Q. Mr. Addicks, since you were on the stand and were interrogated regarding the action of the Executive Committee of the Consolidated Gas Company relative to coal, as embodied in Defendants' Exhibit AA-48, has there been a decrease in the prices paid by the complainant company for coal?

Mr. Chambers: Same objection.

The Master: Not rebuttal?

Mr. Chambers: Not rebuttal.

The Master: Sustained on that ground.

42132 Mr. Ransom: Exception.

Q. Is the complainant company at the present time, and for coal for 1920 delivery, paying more or less than the prices last shown in Defendants' Exhibit AA-48?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception. That is all. Now Mr. Carter.

ROBERT A. CARTER, recalled by the complainant in rebuttal, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Carter, prior to March 31, 1917, did the complainant company occupy for branch office purposes certain premises at 112 West 42nd Street, including the ground floor and the basement of 112 and 114 West 42nd Street?

Mr. Chambers: I object to the question as incompetent, irrelevant and immaterial.

Mr. O'Brien: Same objection. 42134

The Master: Objection overruled.

Mr. Chambers: Exception.

The Master: I take it this is testimony affecting the 57th Street branch office building?

Mr. Ransom: It is.

The Master: That I will take.

A. Yes, the company was occupying the ground floor and basement of premises 112 and 114 West 42nd Street.

Q. Under a lease

A. Under a lease which expired in April, on April 1, 1917, but which the company was advised it could not renew.

42135

Mr. Chambers: I object to that and move to strike that out.

The Master: No, I will let it stand.

Mr. O'Brien: It is not responsive, your Honor.

The Master: Not entirely so, but I will let it stand.

Q. What amount did the complainant company pay for the rental of those premises?

Mr. O'Brien: Same objection, not rebuttal.

The Master: Yes, I take this as affecting the 57th Street situation.

Mr. Chambers: I object to it on the ground it is incompetent, irrelevant and immaterial, and the leases are the best evidence.

The Master: I will take it.

Mr. Chambers: Exception.

A. $30,000 per annum.

Mr. Chambers: That is about what we say.

Q. What notification, if any, did the complainant company receive from the owners of the premises as to the increase or decrease of the rental in the event of a renewal?

421,37 Mr. Chambers: I object to that as being too speculative, incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Exception. It is not rebuttal.

Mr. Clark: And not the best evidence.

Mr. Chambers: Not the best evidence and not proper rebuttal.

Mr. O'Brien: This question does not go to the adequacy of the quarters.

The Master: It may not be the best evidence. I will take it, however.

421,38 Mr. Clark: Exception.

Mr. Chambers: Exception.

A. I do not recall very distinctly about that.

Mr. Chambers: I move to strike out that answer; he does not recall.

The Master: No.

The Witness: My recollection is that the conditions under which we could have renewed the lease—

Mr. Chambers: No, I object.

Mr. O'Brien: It is a self-serving declaration.

Mr. Chambers: He said he could not recall: that is an answer.

42139

Mr. Ransom: I believe the witness said he could not recall very definitely.

The Master: I do not believe he is responding to the question. Do you recall definitely or indefinitely what the rent would be had you renewed it?

The Witness: I do not recall the figure, your Honor.

Q. Was it an increase or decrease?

A. An increase.

Mr. Chambers: I object to the question.

The Witness: I do recall it. It was increased.

42140

Mr. O'Brien: Your Honor, you can see where we are going to get with this kind of testimony. You and I know what 42nd Street over to the west is. You know that they own a big stretch of land over there from Eleventh Avenue to the river, absolutely useless, where they could have their office. They do not need to be up on 57th Street with the art galleries, they do not need to be up on Fifth Avenue to deal with the poor consumer that comes to pay $1.37 on a gas bill.

The Master: That is all argument. Let us get the facts.

Mr. O'Brien: But let us save time.

42141

Q. Did the company also at that time, and prior thereto, use and occupy a show room at 30 East 42nd Street?

Mr. Chambers: Same objection on the ground it is not proper rebuttal and is incompetent.

The Master: Overruled. I think it is rebuttal.

Mr. Chambers: Exception.

A. It did.

Q. Do you know what was the amount paid per annum by the complainant company as rental for 30 East 42nd Street?

Mr. O'Brien: I object to the question. The books show it.

Mr. Chambers: It is incompetent, irrelevant and immaterial, not the best evidence, not rebuttal.

The Master: I will take it.

Mr. Chambers: Exception.

A. $24,300 per annum.

Q. Do you know the total floor space which the company then had and used at 112 and 114 West 42nd Street for this branch office purpose and for
42143 the show room at 30 East 42nd Street?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not the best evidence and not rebuttal.

The Master: Overruled.

Mr. Chambers: Exception.

A. 24,000 square feet.

By the Master:

Q. Altogether?

A. Altogether.

Q. That was the stores, both of them, or stores and basements?

A. In the case of the West 42nd Street it was the
42144 store and basement, and in the case of East 42nd Street and Madison Avenue it was the store.

Q. Have you any figures showing what the store space was as distinguished from the basement space?

A. I have not with me, your Honor. I have the figures; yes, sir; but I have not them with me at the moment.

By Mr. Ransom:

Q. Can you state the rate of rental paid per square foot occupied for these two—

The Master: I think that is a matter of computation.

Mr. Chambers: I record the same objection.

The Master: It is a matter of argument.

Mr. Ransom: Subject to correction I will state that it is $2.26 per square foot.

Mr. Chambers: I object to that.

The Master: I have no objection to counsel stating what he says it is, but I will figure it out myself.

Mr. Chambers: Exception.

Q. You were a member of the Building Committee of the complainant company at that time?

A. I was; yes, sir. 42146

Q. Do you recall the names of the other members of the committee?

A. Mr. Sterling, Mr. Addicks, Mr. Cortelyou, Mr. Vanderlip, Mr. Brady.

Q. Mr. Murray?

A. Mr. Murray.

Q. At about this time, or prior thereto, did the Building Committee give consideration to the question of providing by lease or purchase new quarters for branch office and show room purposes?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception. 42147

A. Yes, such consideration was given.

Mr. O'Brien: Did you say Mr. Vanderlip was on that committee?

The Master: He did.

Mr. O'Brien: That is important.

Q. In what vicinity did the committee determine to locate the branch office?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and not the best evidence.

The Master: Overruled.

Mr. O'Brien: I object on the further grounds that it is repetition, that the books show what they did; that this galaxy of celebrities does not lend any dignity to the proposition of its wisdom or prudence, it has to stand on other ground than that framework.

Mr. Ransom: I will withdraw that question for the moment.

Q. In the first instance did the Building Committee determine some general vicinity or neighborhood in which it was deemed advisable to locate the new
42149 branch office and show rooms?

Mr. Chambers: I object to that as incompetent.

Mr. O'Brien: I object to that.

The Master: The objections are overruled.

Mr. Chambers: Exception. It is not rebuttal.

A. Yes, they did determine within a reasonable area about where it should be located.

Q. What area would you indicate as that which they determined upon?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. O'Brien: Your Honor, if we had the
42150 Gilbertian way, if you will allow me to coin a word—and I do not refer to the author of Senate Document 47, but to the honored Master in this case—this examination would be chopped off in about two questions. If you will indulge me, I will show you how you will do it.

The Master: No.

Mr. O'Brien: Mr. Carter, why did you change to 57th Street?

The Master: Well, I am going to let Judge Ransom do it his way.

The Witness: I would like to answer that question, if you will allow me.

Mr. Chambers: Exception.

Mr. O'Brien: But this is at the rate of thousands of dollars a minute, your Honor.

Mr. Ransom: When this torrent subsides, Mr. Carter, will you answer the question?

The Master: What was the area determined upon?

A. Well, the area in which we sought a suitable plot of ground was within the area approximately bounded by Sixth Avenue and Ninth Avenue, 55th Street and 59th Street, that being considered central as to that district, convenient as to the public who 42152
are served by that branch office, and what we sought particularly to provide was a locality that would be easily accessible by means of the surface cars and the subways and the stage routes, and at the same time a street whereon we could have a show room in which could be displayed advantageously the kinds of appliances, the domestic appliances, heating and cooking and lighting, that the company sells and rents.

Q. Was a canvass made at that time of the plots of land available in this vicinity which you have indicated?

Mr. Chambers: Same objection.

A. It was. Several plots were considered as to 42153
their availability and their desirability, their cost and the conditions under which the company could obtain the use of them, either by purchase or by lease, and the consideration led to the adoption or to the selection of the 57th Street plot as being the best located, as furnishing the best place for a show room, because we foresaw, or were advised, that 57th Street was becoming an important thoroughfare. We deemed the fact that Carnegie Hall was only a block away, and that almost daily and every evening throughout the year there are concerts and entertainments

of one kind and another given there, largely attended by women—

Mr. O'Brien: By the poor people?

A. (Continued.) By women who are always interested in the kind of goods that the company proposed to display in its show windows. It was convenient by way of two or three subways having stations within a very short distance, several lines of cars, a stage route, which made it very accessible to the public. The amount of space insured adequate quarters for the commercial department on the ground
42155 floor, which our experience had established to our satisfaction is of the utmost importance.

Mr. O'Brien: Now, just a minute, Mr. Carter.

Mr. Ransom: I object to this interruption.

Mr. O'Brien: No, I am going to do what Judge Ransom has done a thousand times to the defendants' witnesses, object to the speech. He is asked a question and he is reading into the record here a lot of conclusions.

The Master: He is giving his reasons that led them to select 57th Street.

Mr. O'Brien: No, he is interspersing it with
42156 adjectives—adequate and wise judgment, and all that self-abornment stuff.

The Master: Yes.

Mr. O'Brien: He has not told us about the poor pedestrians who would come there, the woman with a shawl about her, and her little kiddie that she has to carry with her, and has to cross the most dangerous part of the City, so far as traffic goes.

The Master: Where is that?

Mr. O'Brien: 57th Street and Broadway.

The Master: Isn't there a traffic cop there?

Mr. O'Brien: No traffic cop is there so far as I remember.

The Master: If you come over there I will show you one.

Mr. O'Brien: Your mind is made up, apparently.

The Master: About what?

Mr. O'Brien: On that question.

The Master: Not at all. I am going to ask Mr. Carter in a minute if he figured out what the rent was going to be when he figured the cost of the land and the rest of it. 42158

Mr. O'Brien: Why, it is the darkest piece of land at night, at 57th Street and Broadway.

Mr. Ransom: That is why it shows up so well.

The Master: I suppose now that Mr. O'Brien has made me say what was in my mind, I will ask did you figure up what the cost of the land and the building would be and what that would figure out in rent?

The Witness: Yes, we did, your Honor.

The Master: Proceed. I suppose I got ahead of Judge Ransom, but Mr. O'Brien led me to say what was running in my mind. 42159

Mr. O'Brien: I know what is running in your mind, your Honor.

The Master: What is it?

Mr. O'Brien: There could not be any stronger condemnation of the way that they are running this business and the way they are using the consumer's money than what he has told us this afternoon.

The Master: I do not agree with you.

Mr. O'Brien: People going to pay bills down to an art gallery section where the rich live—ridiculous.

The Master: But, as a matter of fact, they have located themselves on 57th Street in the manner described, at a cost not exceeding what they would have to pay in rent in some obscure section around there. I surely am not going to set up my judgment in the place of the judgment of these trustees.

Mr. Chambers: Well, they have not.

The Master: That is another question. I say if the fact is that way.

Mr. O'Brien: They have not told you yet what
42161 percentage of people come personally and pay bills and what they get through the mails. There is a whole lot of this is not covered, your Honor.

The Master: You will probably be asking that when I am down in Cuba.

Mr. O'Brien: You are probably staking your opinion on the judgment of these men, and you say you won't stake your judgment as against theirs. I won't tell you now what I think about that.

The Master: No, but I say if the fact is that it does not cost them any more to have this show
42162 room on 57th Street and all the rest of it, than it would if they hired quarters somewhere else, I surely am not going to set up my judgment against theirs.

Mr. O'Brien: There is available land.

Q. At what price was this property first offered to the committee?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: I do not think that is important, what it was first offered at.

Mr. Chambers: We have the figure that they paid for it. That is sufficient for our purpose.

The Master: That is all there is to it. I will assume that they got the best price they could, and that they beat the man down who tried to sell it to them. The actual selling price in my experience is always less than the asking price. That means nothing to me in this record.

Q. At the meeting, May 2d, 1916, of the Building Committee, did the engineer of construction, Mr. W. Cullen Morris, secure and present from Mr. H. J. Hardenburg, an architect, a plan showing the possible utilization of the existing structure on the 57th Street plot, with an estimate of the cost of adapting the structure for branch office purposes, amounting to $93,000? 42164

Mr. Chambers: I object.

The Master: One minute. Do you mean the possibility of remodeling the buildings that were then on the property?

Mr. Ransom: Yes.

The Master: I will allow the question, without the cost, for a minute.

Mr. Chambers: I object to it as being problematical and speculative. 42165

The Master: No, I will take that. I take it all as showing or tending to show that these trustees did not carelessly or arbitrarily or in some offhand manner simply pick out a site, and, without regard to various other considerations, put up a new ornate building, as Mr. O'Brien would call it.

Mr. Chambers: You know they were rich men.

The Master: I think it is proper rebuttal to

42166 how that they considered every angle of it, and I will take it

Mr. Chambers: What did they care?

The Master: They apparently did care. That is what Mr. Ransom is trying to bring out from Mr. Carter. I have ruled on that question. I want to take that answer and then adjourn for the evening.

Mr. O'Brien: Over my objection and exception.

A. He did.

Adjourned to Thursday, February 26, 1920, at
42167 9:30 A. M.

Last Complainant's Exhibit No. 468.
Last Defendants' Exhibit AA-516.

42168

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 42169

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, February 26, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 42170
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Chambers: If it would not be out of order I would like to offer in evidence this morning the certificate of Mr. Yalden, showing that he was admitted on February 25, 1899, as a certified public accountant of this State, and was awarded Certificate 138 by the University of the State of New York. 42171

Mr. Ransom: What date?

Mr. Chambers: February 21, 1899.

Mr. Ransom: Have you the report of the Board of Examiners of Certified Public Accountants on Mr. Yalden's application.

Mr. Chambers: I have not.

The Master: Let me see that certificate (taking paper).

Mr. Ransom: Will you get it or will you require me to subpoena it?

42172

Mr. Chambers: I won't get it; I won't do anything about it. I am going to offer the certificate in evidence.

The Master: It will be received.

Mr. Ransom: No objection.

Marked Defendants' Exhibit AA-517.

The Master: Is there anything ready that you want to put in, Mr. Chambers?

Mr. Chambers: I have not anything this minute. This is one of the things.

Mr. Clark: Have you got the tax bills that I called for yesterday. I asked for three tax bills.

42173 I wanted to put them in.

Mr. Ransom: They were here yesterday and the day before.

The Master: You did not say anything about them yesterday.

Mr. Clark: It slipped my mind.

The Master: I do not want to keep putting in a lot of things here during the rebuttal; I would rather wait a few minutes and clean up those matters.

Mr. Ransom: I think I have got them.

Mr. Clark: Yes, I tried to get them yesterday.

42174 Mr. Ransom: Yes, they are here. They are produced.

Mr. Clark: May I see them (takes the papers). I would like to offer in evidence the special franchise tax bills for 1915, 1916, 1917 and 1918.

The Master: Any objection?

Mr. Ransom: I have no objection to the bills. I think it is a little bit out of the proper order of proof.

Mr. Clark: I admit that.

The Master: That is all right; have them marked.

Bills of 1915 marked Defendants' Exhibit AA-518.

Bills of 1916 marked Defendants' Exhibit AA-519.

Bills of 1917 marked Defendants' Exhibit AA-520.

Bills of 1918 marked Defendants' Exhibit AA-521.

ROBERT A. CARTER resumed:

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM: 42176

Q. Mr. Carter, at the adjournment hour yesterday you had spoken about a plan which had been submitted to the Building Committee with regard to the possibility of utilizing the then existing structure on the 57th Street site for the purposes of a branch office and show room. What action did the Committee take in regard to the plan?

Mr. Chambers: I am going to object to that as incompetent, irrelevant, immaterial and not rebuttal.

The Master: Overruled.

Mr. Chambers: Exception.

The Master: I have made several rulings, Mr. 42177
Chambers, that I am going to take all of the testimony under this line as tending to show what the company did with reference to any suggested plan of Mr. Boylan's that they should have done something else, and as indicating that they exercised judgment with reference to it, as a basis for a finding that the judgment was exercised, so that the Courts may hold, as I think they will—at any rate I will—that the judgment of the Court cannot be substituted for the judgment of trustees, honestly exercised.

Mr. Chambers: I think it is an incompetent way of showing it, for one thing. I have made my objection and take an exception.

A. The Committee rejected that plan as being inappropriate, as to appearance, and not suitable in other respects, because of the necessity of erecting retaining walls and breaking up the office space disadvantageously.

Q. The building which was there was an old church?

A. Yes.

Mr. Chambers: I object to that.

42179 The Master: Overruled.

Mr. Chambers: Exception.

Q. What was the judgment of the Building Committee as to the provision which should be made in any building on this 57th Street land in order to meet the requirements of the company for a branch office and show room?

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial, and not rebuttal.

The Master: Overruled.

Mr. Chambers: Exception.

A. It was deemed important that, whatever the character of the structure might be, the ground floor

42180 should be reserved for the purposes of the Commercial Department and for the display room, and that the company should have at least two floors as well as the basement of any structure that should be erected on the plot.

Q. Why was any such provision deemed necessary?

Mr. Chambers: I object to that as calling for the operation of the witness's mind; also as incompetent, irrelevant and immaterial.

The Master: That is just what I intended to take, the operation of their minds at that time.

Mr. Chambers: He was not the Consolidated Gas Company.

The Master: He was part of it.

Mr. Chambers: Exception.

A. That was in accordance with the experience and observation of the company in connection with other branch offices. It also took into account the convenience of the public, as well as the importance of having a suitable place in which to display the kind of appliances that the company were selling and renting. It was found that it greatly facilitates and expedites the transaction of business with the consumers to have 42182
the bookkeeping department and the clerks who wait upon the customers who have occasion to call at the office on the same floor. It obviates the delay which the company has observed from separating those two departments and having the bookkeeping force on a different floor from the clerks who wait upon customers. The company's experience is that, whatever the customer's errand may be, it generally involves a reference to his account, and it greatly simplifies matters to have the clerk who waits upon him able to step to the ledger in which his account is kept and consult it for whatever purpose may be necessary, without the delay which would result from the use of elevators 42183
and dumbwaiters and carriers and telephones and speaking tubes and messengers and devices of that kind for transacting the business, on two different floors; and it also reduces the expense of operating these departments, as fewer clerks are required to transact the business than would otherwise be necessary.

Q. The things which you have said are the considerations which appealed to you as secretary of the company, General Supervisor and head of its Accounting Department, and also of its Commercial Department?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

A. Yes, that is—

Mr. Chambers: Just one minute, Mr. Carter, if you please. It is incompetent, irrelevant and immaterial, calls for the operation of the witness's mind, and is not rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Witness: Yes, I had—

The Master: "Yes" is the answer.

42185 The Witness: That is the answer, yes.

Q. Can you say what has been the advantage, if any, to the company, of carrying out such an arrangement of floor plan of the 57th Street office as exists, and of the location in 57th Street?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper rebuttal.

The Master: It is overruled.

Mr. Chambers: Exception.

A. That could best be shown by comparing the results of business transacted on the floor in the way of cash sales and store sales and sales of lighting units

42186 and that sort of thing—

By the Master:

Q. Do not give us those figures, Mr. Carter. I doubt very much if I can go as far as that. You believe that the result of sales and transactions referred to—yes, they increased, I take it from what you have said, very largely?

A. They have increased, and, as compared with other branches not as favorably located, are very much larger.

The Master: I will take that and not go into the figures. It leads to a discussion and analyza-

tion of figures as to whether it is due to this or other causes. I will take what you say.

By Mr. Ransom:

Q. You have detailed figures which lead you to that conclusion?

Mr. Chambers: Same objection.

A. Confirm that conclusion, yes.

Q. At the time the Building Committee had this matter under consideration, what investigation was made and what determination was arrived at as to the structure as a whole that should be placed on this plot?

Mr. Chambers: I object to that as irrelevant, 42188
incompetent and immaterial.

The Master: Do you mean whether it should be a two or a three-story building, or a twelve-story building?

Mr. Chambers: It is speculative, problematical and imaginative.

The Master: I will take it. What would you say about Senator Boylan's expert testimony?

Mr. Chambers: That was not the point; that was not speculative. Putting a little bit of flat building on that valuable land. The question is whether that is an adequate improvement or not, for one thing. 42189

Mr. Ransom: We will see; let him answer.

Mr. Chambers: Mr. Carter, will all due respect to him, in making speeches here.

The Master: Go ahead, Mr. Carter.

The Witness: The idea was quite enthusiastically entertained of constructing a substantial building twelve or thirteen stories on the property, the operation of which might produce economies that would reduce the cost of carrying the space required by the company for its own purposes. I

42190 Robert A. Carter, Direct

personally was quite favorable to that and interviewed myself several real estate agents, and conferred with them, as to what we might expect to realize in the way of rentals, and for what the upper floors might be used. I conferred with Pease & Elliman, John Golding, Joseph P. Day, Shape & Bready, and Cook & Livingston, and two or three others. They did not agree among themselves as to the character—

Mr. Chambers: I object to that.

The Master: I will take it.

42191 Mr. Chambers: Exception.

The Master: I assume the witness means that there was no unanimity among these real estate men.

The Witness: There was no unanimity. Some said housekeeping apartments, some kitchenette apartments, others studios, others thought the floors should be used for office purposes, some thought it would be suitable for doctors' offices. Others thought it would be suitable for lofts, and they were all canvassed quite thoroughly. The forecast made of the revenue that might be derived from the revenue of the building looked

42192 rather engaging, assuming full occupancy, but the investigation I had made in the neighborhood disclosed vacancies in apartments in that neighborhood, and there was no assurance that we would be able to rent all of those apartments. Furthermore, other reasons, so far as I was concerned—

The Master: When was it that this building was built?

The Witness: It was built between—well, we started it in the fall of 1916, and it was completed early in 1917. We moved in there about

April 1, 1917. We had propositions made to us to take the property off our hands and put up a building, but most of those propositions involved our investing a substantial sum of money.

Q. In a large building?

A. In a large building. Others recommended, and particularly Mr. Peabody of the Astor Estate, whom we conferred with, advised the construction of a building to meet the company's own individual needs. Messrs. Wood and Dalson gave that advice also.

By the Master:

Q. That is Wood and Dolson, I guess it is. 42194

A. Wood-Dolson, yes, that is it.

Q. Of course they did not know what was going to happen to 57th Street and these housing conditions?

A. No, they did not know. Mr. Wheelock also gave the finding—

Mr. Chambers: Do you mean you cannot prophesy as to the future? That is what we have been arguing here.

The Master: I say, Mr. Chambers, in 1916 and 1917 nobody had any notion as to the present housing conditions in New York.

Mr. Chambers: Nobody has any idea what will happen to oil, really, as a matter of fact. 42195

Mr. Ransom: Mr. Little has.

The Master: If oil takes the same course as real estate and housing conditions have in New York, based on my own condition and what I will have to pay for a house beginning the first of October, the cost of gas to the consumers will be some cost.

By Mr. Ransom:

Q. Mr. Carter, after these discussions with these various persons whom you have mentioned, and others, was it the conclusion that no plan of putting up a large

apartment or loft building could be gone ahead with without the Consolidated Gas Company having substantially to finance the undertaking?

A. That was the case, yes.

Q. After these negotiations what did the company do so far as obtaining any advice or report from Messrs. Warren and Wetmore?

Mr. Chambers: Same objection and exception.

A. They asked Messrs. Warren and Wetmore to make a report on the relative advantages of the various propositions that had been considered, as to the
42197 kind of improvement that should be made on that property.

Q. Did Messrs. Warren and Wetmore make such a report in 1916?

A. They did, in May, 1916, we received a letter.

Q. Have you that letter?

A. That is May 12, 1916 (handing counsel).

Q. And this report by Messrs. Warren and Wetmore, by Charles D. Wetmore, was presented to the Building Committee and was one of the factors which it took into account in reaching its judgment and determination on the matter?

A. Yes, it was acted upon and the company—

42198 The Master: Well, your Committee reached a conclusion?

The Witness: Reached a conclusion; yes, sir.

Mr. Ransom: I offer it in evidence.

The Master: Show it to the other side.

Mr. Chambers (taking paper): I object to it as incompetent, irrelevant and immaterial.

The Witness: Of course at that time the prices of building materials and labor were going up, all soaring.

The Master: Beginning to?

The Witness: Beginning to; yes, sir.

The Master: I will take it.

Mr. Clark: Exception.

Mr. Chambers: Exception.

Mr. O'Brien: These are self-serving declarations. Add my protest, too.

Marked Complainant's Exhibit 469.

Q. Thereafter, Mr. Carter, and before action was taken by the Building Committee, did the Building Committee receive a further or supplemental report from Messrs. Warren and Wetmore on the subject?

A. They did. The company did receive it. 42200

Q. Have you that?

A. Yes (handing counsel).

Q. That was in relation to the possibility of developing the building for doctors' offices?

A. It was referred to in their letter of May 12th.

Q. That also was before the Committee at the time it took final action?

A. It was; yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I will take a look at it. I object to it as incompetent, irrelevant and immaterial and hearsay.

The Master: Objection overruled. 42201

Mr. Chambers: Exception.

Marked Complainant's Exhibit 470.

Q. What conclusion did the Committee reach as to the apartment house proposition, not to go ahead with it?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

A. Yes, that is the conclusion that was reached.

Q. Why was it not deemed desirable or advan-

tageous to rent space, instead of putting up some structure on land owned by the company?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, calling for the operation of the witness's mind.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Computations were made which indicated that the cost of carrying such a structure as the company would require, plus the cost of the land, would be well within the amount that it was paying on 42nd Street

42203 for the offices it was occupying, for rent.

Q. That was not quite what I asked you: Why was it not deemed as advantageous from the viewpoint of the branch offices and the Commercial Department, and so on, to rent space instead of owning it?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception.

A. Of course, that runs to the fact that the disadvantages to the public in the change in location of gas office are very great.

Q. And also the disadvantages to the company?

A. The disadvantages to the company of moving

42204 are very great. But at this branch office, for example, there are pretty nearly 100,000 consumers who are served from that office, and the inconvenience to them resulting from a change in the location of the office would be very considerable.

Q. Your experience has been that where you rent, the period of occupancy is uncertain and not great?

A. Well, it is.

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception.

42205

A. (Continued.) In fact the only place that we have rented an office has been for this particular branch and for a branch office that we established up in the northwestern section some few years ago. Our Hester Street office we have owned and occupied for over fifty years; the office at the corner of Irving Place and 15th Street has been similarly owned and occupied for a longer period. The Harlem office at 114th Street and Third Avenue has been owned and occupied for substantially over fifty years, and in respect to the Amsterdam Avenue office we have purchased a plot of land and expect to put up an office building, a 42206
branch office building, so as to have a permanent site, at a permanent and definite cost, for an indefinite period.

Q. You said that computations had been made about carrying costs. Can you give figures showing the carrying cost of the 57th Street building, as that carrying cost has been, as compared with the fixed charges if the premises were secured through a rental basis in that general vicinity?

Mr. Chambers: I object to that as argumentative and as incompetent, irrelevant and immaterial.

Mr. Clark: It has not been shown that Mr. 42207
Carter is a real estate expert and knows values in that neighborhood.

The Master: Objections overruled.

Mr. Clark: Exception.

Mr. Chambers: Exception.

A. Just taking the actual investment in that 57th Street building, and the space available, produces an annual carrying charge per square foot of space occupied of about $1.88, as against $2.20 for the space that was occupied in 42nd Street.

42208 Robert V. Carter, Direct.

The Master: And where an increased rent was anticipated?

The Witness: Yes, sir.

Q. In 1911?

A. As late as 1916 we were in the 42nd Street Building.

The Master: You do not in any way attack the honesty of the trustees in doing what they did, do you? You attack their judgment; isn't that the idea?

Mr. Chambers: Well, I do not know what you
42209 call it. I attack it.

The Master: You are not willing to say it is merely an attack on judgment rather than an attack on good faith?

Mr. Chambers: Well, I do not know just how to put it. I would say that that office building is not any kind of a building for this company. I do not know what they had in mind, any of these people—whether they had any property to sell.

The Master: I am asking you what you have in mind. Do you attack the good faith and honesty of purpose, or do you attack the judgment?

Mr. Chambers: Well, I do not know what to
42210 call it.

The Master: I will know what to call it when I decide it.

Mr. Chambers: That is as near as I can get to it. Some Court may say it is an attack on their good judgment, somebody else may say it was some other kind of an attack.

The Master: I shall say it is an attack on judgment, and that the Courts are not inclined to set up or substitute their judgment for the judgment of the trustees of a corporation honestly exercised.

Mr. Chambers: If you follow that out, that will lead you to this: In their best judgment they could spend their money anywhere, for any kind of purpose—for picnics, as they do. They contribute to the Boy Scouts and other movements, and want the consumers to carry it.

The Master: Insofar as it has any possible relation to the gas business I will make just that ruling.

Mr. Ransom: You will notice that we had that space for the Boy Scouts during the war and it has since been given up. 42212

Mr. Chambers: Your decision is not final, though.

The Master: No.

Mr. Chambers: Not even on the facts.

The Master: I understand all that.

Mr. Ransom: Only during the war they had had the Boy Scouts, and since then that space had to be taken over by the company.

Mr. Chambers: They might even make contributions for a political purpose.

The Master: No, they cannot do that.

Mr. Chambers: Well, it might be their best judgment to contribute to some political party. 42213

Q. Mr. Carter, has there been prepared by you and under your direction schedules setting forth in detail the expenditures made by the Consolidated Gas Company from November 11, 1884, to December 31, 1918, for property acquired by the complainant company, and the credits against such costs for property retired or withdrawn from service, as comprised within the aggregate amounts of fixed capital purported to be shown on Defendants' Exhibit AA-246?

A. Yes.

42214 Robert A. Carter, Direct.

Mr. Chambers: I object to that as incompetent, irrelevant, immaterial and not proper rebuttal.

The Master: Overruled.

Mr. Chambers: Exception. I ask that Mr. Carter not answer the questions until my objection is in. Exception to the ruling.

Q. You have designated these schedules as A, B, C and D?

A. Yes, they have been so designated.

The Master: Have these schedules been shown the other side?

42215 Q. These are the schedules, Mr. Carter, which were given to the other side, copies to each of the defendants, on or about January 20th or 21st?

A. Yes.

Q. You have already testified, Mr. Carter, that during the entire period since November 11, 1884, you have either been directly employed upon the books and accounts of the company or they have been kept under your personal supervision and direction?

A. That is the case.

Q. And you have been familiar with the expenditures by the complainant company since 1884, and their purposes?

42216 A. I have been.

Q. And with the withdrawals and retirements of property since that time?

A. Yes.

Q. To your knowledge do the books of account directly set forth the expenditures made for property, and the credits for property retired and withdrawn from service?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, improper and not rebuttal.

42217

Mr. O'Brien: Same objection.

The Master: I think it is cumulative.

Mr. Ransom: In view of that ruling, I will withdraw it.

Mr. Chambers: You cannot wholesale the thing in.

The Master: Either the books have been proved up long before this or they have not.

Mr. O'Brien: Like Shakespeare's man, "He doth protest too much."

Mr. Chambers: We will come to the Court on the question whether they were properly put in originally.

42218

Mr. O'Brien: He wants to bolster it up now.

Mr. Ransom: I think your Honor may be under a little misapprehension. We did not put in books prior to 1906.

The Master: That is right, that is correct.

Mr. Ransom: The defendants have presented tabulations from the books.

The Master: I will allow the question. Judge Ransom is right about it.

Mr. Chambers: Exception.

Mr. O'Brien: The question is confined to the period from 1884 to 1906?

The Master: From 1884 down to date, isn't it?

42219

Mr. Ransom: Yes.

The Master: Insofar as the question refers to books prior to 1906 it is not cumulative and I will allow it.

Mr. Chambers: I am going to add to my objection that it is hearsay, that Mr. Carter has not shown that he made the entries in the books or knows anything about what is in them, in detail; it is secondary evidence.

Mr. O'Brien: Apart from the strict rule that

42220

would apply here, I want to say that this simply opens up more investigation and we will be with General Grant here all summer.

The Master: We will handle that when we come to it.

Mr. O'Brien: We move from St. Patrick's Day to Labor Day as the day of closing this case.

Mr. Chambers: I have one more objection.

Mr. O'Brien: Don't you see we will have to go in and find out how much Mr. Carter knows about these books? There will be a whole lot

42221 of investigation.

The Master: I cannot help it.

Mr. Chambers: The additional objection I have is that it deprives the defendants of the common-law proof and the right to cross-examine.

The Master: All the objections you made with reference to the books from 1906 down to date, to 1919, would apply to this offer, unquestionably.

Mr. Ransom: I do not think that is quite correct, your Honor.

The Master: Why not?

42222 Mr. Ransom: We did not attempt to prove book cost of property from 1884 to 1906.

Mr. Chambers: You did not attempt to prove anything.

Mr. Ransom: We proved a concept of value on which we are willing to rest for the purposes of this case.

Mr. O'Brien: I am going to object right here to that—

The Master: You cannot object until Mr. Ransom finishes.

Mr. O'Brien: That word "concept": they are going to ring in that word "concept," your Honor—

The Master: Let Mr. Ransom finish his statement.

Mr. Ransom: The defendants, without putting in the books from 1884 to 1906 presented over my objection and exception tabulations, partial, fragmentary, abbreviated, attenuated and disjointed.

The Master: I am going to dispose of this very quickly. 42224

By the Master:

Q. Mr. Carter, you have heard the testimony, seen the exhibits offered here, with reference to the book cost from 1884 to 1916?

A. Yes, sir.

Q. Those witnesses' testimony and tables were stated to have been made from the books of your company; is that correct?

A. Yes, sir.

Q. Have you prepared schedules based on those same books?

A. Yes, sir.

Q. Showing additions and the other matters referred to? 42225

A. Yes, sir.

The Master: It is direct and square rebuttal.

The Witness: There is a question that is unanswered.

The Master: Well, I have substituted my questions.

Mr. Chambers: Did he prepare those books himself?

Q. Those books of account were the regular books of account?

A. Yes, sir.

Q. Kept in the ordinary course of business?

A. Correct.

Q. The books referred to by the defendants in their proof?

A. Yes, sir.

Q. And they are the same books?

A. The same books and the only books.

By Mr. Ransom:

Q. Schedule A is the detailed statement of the cost of the company's real estate, including improvements thereon other than manufacturing plants and holder stations, from November 11, 1884, to and including December 31, 1918?

42227

A. Yes.

Q. Schedule B is a detailed statement of the cost of the company's manufacturing plants and holder stations to and including December 31, 1918, from November 11, 1884?

A. Yes.

Q. Schedule C is a detailed statement of the company's cost of mains and services from November 11, 1884, to and including December 31, 1918?

A. Yes, sir.

Q. And Schedule D is a detailed statement of the cost of the company's meters, cocks and connections, furniture and fixtures, horses, wagons and harness, tools and implements, scows, gas appliances rented, automobiles and accessories, from November 11, 1884, to and including December 31, 1918?

42228

A. Yes.

Q. Schedule E is real estate, including improvements thereon, other than manufacturing plants and holder stations not claimed to be used, as of December 31, 1918, and hence to be deducted from the total cost as shown in Schedule A?

A. Yes.

Q. And Schedule F is manufacturing plants and holding stations not claimed to be used, as of December 31, 1918, and so to be deducted from the total cost shown in Schedule B?

A. Yes.

Mr. Ransom: I offer in evidence the schedules which I have produced.

The Master: The Schedules A to F, inclusive.

Mr. Chambers: I would like to examine Mr. Carter personally, to see if he made them. He has not said he made them. Did he make them 42230
from the books? Who made them? Who did this work? Mr. Carter has been in court mostly every day.

The Master: I will let you cross-examine him. Go ahead.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Carter, who made up these schedules that are now being offered in evidence? I will take one, for instance, Schedule A, detailed statement of the cost of company's real estate including improvements, etc., and ask you who made that up?

A. Which one is that, "A"?

Q. "A." I will show it to you. 42231

A. Well, I can answer as to all of them. They were made up by my staff under my directions.

Q. Have you checked any of the matters in them?

A. I have.

Q. All these figures you have checked?

A. I have not. I have checked enough to satisfy myself that they are absolutely correct.

Q. Who did the work?

Mr. O'Brien: Wait a minute, Mr. Chambers. I move to strike out the answer, "I have checked enough to satisfy myself," etc.

The Master: I will deny the motion.

Mr. O'Brien: Exception.

Q. You checked them from the books of the company?

A. Checked them by the books of the company.

Q. Take this first one, what pages did you take?

The Master: I am going to make a ruling on this cross-examination. I am going to stop it now. These schedules having been presented to counsel for the defendants on January 20th, as I am informed by Mr. Ransom, and there being no statement to the contrary from the counsel for the defendants—

42233

Mr. Chambers: I do not remember ever seeing such schedules as these.

Mr. Clark: If your Honor please, our experts have been absolutely up to their necks in our case. This handing them to us does not help us to look at them.

Mr. Ransom: Mr. Hine used them, he said.

Mr. Clark: So far as checking them up with the books is concerned.

The Master: I shall not permit any cross-examination at this time. If there were any errors in them they would be easily pointed out. This is a peculiar case, where an opportunity has been afforded the defendants, and the strict rules cannot be enforced where over a month prior to the offer of the document it is given to the defendants for the purpose of checking its accuracy. I will not allow cross-examination at this time.

42234

Mr. Chambers: I want to say that I would like to check up and see if we have any such papers as these which are offered.

The Master: That you may do, and if you

42235

have not had them, I will give you a chance to check them, I will give you a fair opportunity to check them up.

Mr. O'Brien: Your Honor, I protest against your ruling. We have the right, which you cannot take from us, to cross-examine this man. That right is not relieved, it is not waived, it is not changed, by their dumping on us, just as we get into the heavy work of presenting our case, under the strenuous obligations imposed by you of going on from 9:30 to 6:00 o'clock each day. The statement you made—and I say it with due respect to you—will absolutely be reversed by 42236
the courts—to say that because they hand us that, as we are about to enter into the presentation of the defendants' case, the presentation of matters that involve so many intricate situations, that, because they have turned over copies of these to us, we are going to be denied the right to cross-examine this witness, I think is absurd.

The Master: I did not say anything of the sort. I said I would not allow any cross-examination at this time, in view of the statement by Mr. Carter that he had checked these schedules and swore they were correct--

Mr. O'Brien: The witness has told you, your 42237
Honor. What he said—

The Master: Can't I finish a statement?

Mr. O'Brien: You can finish, but I want to tell you this while it is on my mind.

The Master: Keep it on your mind a minute. (Continuing.) —and particularly in view of the fact that witnesses for the defendants have been testifying with reference to those very figures and those very books, and must know by a very casual examination of them whether there is an error in them at all. I won't allow any further cross at this time.

42238

Mr. Chambers: Exception.

Mr. Ransom: And I call your Honor's attention to the fact that we received from the defendants not a single one of their so-called adjusted or revised book cost figures in advance of their actually being put in. We told them we were to offer it in rebuttal and gave it to them more than a month before.

Mr. O'Brien: What you did not give to us, and what we ought to have had long before the trial, was an inventory of your property.

Mr. Ransom: You got an inventory.

42239 Mr. O'Brien: We did not get an inventory. It would have expedited this trial.

The Master: I will hear anything counsel want to say with reference to the statement made by Mr. Ransom, that copies were furnished them on January 20th of these proposed exhibits, and I will hear objections to the offer being made of these papers for the purposes of the record.

Mr. O'Brien: Well, in support further of my objection, your Honor, I call your attention to the statement made by the witness, in which he acknowledges that he has not checked these matters up; he has checked enough to satisfy himself.

42240

The Master: And me.

Mr. O'Brien: Well, if that is the way you feel, there is not any use in our going any further.

The Master: There is not.

Mr. O'Brien: Then I except.

The Master: I have ruled that, for the purpose of this offer, the testimony of Mr. Carter satisfies me that these papers are accurate enough for the purpose of being offered here.

Mr. O'Brien: I except.

42241

The Master: Having in view and in mind the fact that testimony has been offered as to those very items by counsel for the defendants.

Mr. O'Brien: But your Honor has not looked at these papers; you do not know what is in them, you do not know anything about them except Judge Ransom's reading of the outside inscriptions. You do not know whether they are exact figures.

The Master: Yes, but you do. You have had it for a month.

Mr. Chambers: Here is the very first one I pick up, 14th Street, 1884, Rowland's appraisal. 42242
As a matter of fact, Rowland did not appraise a lot of this stuff.

Mr. Ransom: There is nothing here that is not taken from the books.

Mr. Chambers: There is the Rowland appraisal there.

Mr. Clark: I do not remember his statement that he offered these papers in evidence.

The Master: I do not see how the stenographer can take two or three people talking at once.

Mr. O'Brien: Well, pile Pelion on Ossa, the case will come back, there will be a hundred more 42243
objections, reversible errors.

Mr. Chambers: It is all full of Rowland's appraisal. Here is another one (indicating).

Mr. Ransom: It is not out of the air, anyway.

Mr. O'Brien: What they need is a new board of officers and a new man to run this corporation, to protect both the stockholders and the consumers.

The Master: Don't you want to go further than that, Mr. O'Brien, and suggest the names?

42244

Mr. O'Brien: I could make a few suggestions that would serve this company well, both the consumers and the stockholders.

Mr. Ransom: Who else but yourself?

Mr. O'Brien: I would save $30,000 on the account of Whitman, Ottinger & Ransom.

Mr. Ransom: How about Mr. Clark's thirty three?

Mr. Clark: What do you mean? Do you mean I got that, Judge? Because I would like to know it.

Mr. Ransom: You know what I mean.

42245 Mr. Clark: I do not know what you are talking about. Do you mean I am on the pay roll of the company?

Mr. Ransom: Not yet.

Mr. Chambers: I took an exception to the refusal to allow me further preliminary cross?

The Master: Yes.

Mr. Chambers: About every page that I strike here has Rowland's appraisal on it.

The Master: It seems to me I heard something about Rowland's appraisal in Mr. Maltbie's testimony.

Mr. Chambers: Yes.

42246 Mr. Ransom: And heard more about the air, though, in the Rowland appraisal.

The Master: I got the air out of it.

Mr. O'Brien: The difficulty with these things is they throw a whole lot of these schedules at us and they do not say whether they are going to put them in or not.

Mr. Ransom: Yes, we did.

The Master: Yes, they told you that. It seemed to me, though, that there were only one or two of those schedules.

Mr. Ransom: There were the same number as are here today.

42247

The Master: That is the only point in my mind; I recall the statement very clearly that "We expect to offer these in rebuttal," but I had the impression there were only one or two of them.

Mr. Ransom: They had to cover all the different classes of property.

The Master: I say it is only my recollection, that I remember the statement "We are going to offer these in rebuttal."

Mr. Ransom: On the same day, January 21st, we also gave to them a complete cost sheet like Exhibit 364, for 1919.

42248

Mr. Chambers: Let it be noted on the record that they gave me some papers once, and then changed them and put something else on them.

Mr. Clark: The cost sheet was later.

Mr. Ransom: Yes, the cost sheet was given later. The 1919 operating results were given on the 29th.

Mr. O'Brien: There are a lot of inscriptions here, your Honor, that ought to be inspected by you before you pass on this matter.

Mr. Ransom: They will compare with the inscriptions that we have on the books.

The Master: I will take under advisement, 42249
after you have cross-examined Mr. Carter, and called attention to any matters in there you think do not belong there, a motion to strike out. I will not consider them now. I will take them as offered.

Mr. O'Brien: Then again, just as an illustration of the heap of errors, you are going to fall into in putting this in, and heaping them on us, and expect us by some magic to be prepared to come in here and cross-examine, you take this so-called Schedule C, detailed statement of the cost of street mains and services—

42250 The Master: What is your point? You do not want to proceed with cross-examination right away? What is your point, that you do not wish to cross-examine at this minute?

Mr. O'Brien: That ought to be done now, a preliminary cross-examination ought to be indulged in.

The Master: I will not allow it. I will not allow any cross preliminary to the exhibit. If you want to examine it in the afternoon, or want some reasonable time to look them over before you cross-examine Mr. Carter, I will give it to you.

42251 Mr. Ransom: They have been looking at these —at least Mr. Hine has.

Mr. O'Brien: There is not a reference to a book or page in it.

Mr. Chambers: Mr. Hine has not looked at them.

Mr. O'Brien: You cannot tell whether they are the result of figures or computations made from the books, or from the ledger or journal.

The Master: I do not understand that the company's experts adjusted anything; they take them from the books.

42252 Mr. Ransom: I will state now these are not adjusted, or anything of the sort, they are just taken from the books.

Mr. O'Brien: You recall the examination of Mr. Teele.

The Master: I know what Mr. Teele testified to.

Mr. Chambers: How about this Rowland appraisal?

The Master: There will be no further discussion on it. I understand it is just the photo-

42253

graphic sheets that are offered, not any notations on the back of any sheet.

Mr. O'Brien: These do not purport to be the photographs of pages of any particular book.

The Master: No, of the exhibit.

Mr. O'Brien: In fact, they do not give us any page and they do not mention any book from which they are taken.

The Master: The typewritten sheets are offered instead of the photographic copies.

Mr. O'Brien: Does your Honor assume these are reproductions, page by page, of some book of the complainant company?

42254

The Master: No, they are reproductions, page by page, of a typewritten exhibit that is offered here.

Mr. Ransom: A photostatic exhibit. Those are photostatic reproductions.

Mr. O'Brien: You expect something to be checked up and there is no reference made to the pages, or any book, and no designation of a book.

Mr. Chambers: Here is a sheet that shows, "Plant not claimed to be used in gas business." It does not say what it is or what it is made up of.

42255

Mr. Ransom: Read the testimony and what was testified to it.

Mr. O'Brien: Here is a book here I assume is about 35 pages.

The Master: Don't you know where you can find this item, "Mains acquired at consolidation, November 11, 1884"?

Mr. Chambers: The Rowland appraisal.

The Master: Don't you know where you can find this item in the complainant's books, the very first item?

42256

Mr. O'Brien: Your Honor, I am talking about that exhibit.

The Master: Don't you know what that refers to?

Mr. O'Brien: No.

The Master: Well, I do.

Mr. O'Brien: No, I am not going to guess at it, that it might refer to the matters on which you thought I took up a lot of time when I examined Mr. Carter about ten days ago.

The Master: All right, I will hear any objection you have to them.

42257

Mr. O'Brien: Not only that, but take the headings, "Book value of plants"—

The Master: They are intended to reinstate adjusted book values, as offered by the defendants.

Mr. O'Brien: Here is a collection of papers that have no reference to a ledger or operating journal or any other book of account. You cannot tell what pages are omitted. As you know, the only way to proceed orderly in this matter is to examine the witness before they are received in evidence. I take exception to your Honor's ruling. To think that the defendants' interests

42258

are going to be protected in this way, by handing us, when we are in the midst of the defense, voluminous records of this kind, and then expect that we will go right along with the trial in rebuttal, and assume that these things are all right, because our men have been working getting up their own exhibits, I think is very unfair.

Mr. Chambers: Did you have an idea there were no apportionments here? Here is a whole page of them. There is "Apportionment of sewer improvement 62nd Street, apportionment of grad-

42259

ing curbing Block 1909, apportionment of sewer improvement West 132nd Street." It is full of things like that, all sorts of them. Here is another whole page of apportionments.

The Master: Oh, yes, your people have been all over those things.

Mr. Ransom: Those are the deductions.

Mr. Chambers: No, we have not been over them at all. Do not labor under a misapprehension.

The Master: Make your objection.

Mr. Chambers: We have been busy building up our defense.

42260

Mr. O'Brien: But, your Honor, here is another point I want to drive home to your mind. This is not the reproduction of a particular account. If they came in here with photostatic copies of their books, the pages, certain pages of their books in which was a resume of their properties, you might make the ruling which you have, and say, "Well, take care of all these matters in the cross-examination, the general cross-examination." But here there is no reference to a book or ledger, you do not know whether a given figure on a given page of this exhibit I have in my hand, referring to real estate 132nd Street station, is a calculation made from figures in a journal or figures in a ledger. There is not a reference made.

42261

The whole thing is designed to have the investigators and accountants of the defendants just thrown at large through an Argonne Forest, where their work will be a futility. And that was done from the beginning. I firmly believe, your Honor, that the reason why they dumped in here the exhibits covering the years 1906 to 1916, showing the resume of their accounts, and

42262

the reason why they allege those things in their complaint, was to send our accountants off on a wild goose chase and get them so busy with these matters, that were not to be of final concern in the case, that they would not be able to give any time to the matters of crucial and vital interest in the case.

The Master: What are they; what are the matters of crucial and vital interest in the case?

Mr. O'Brien: The cost of making gas is one, the operating expenses, and the way that this company has extravagantly and wantonly spent the stockholders' and the consumers' money is another.

42263

The Master: I guess these schedules will not interfere with the proof on that.

Mr. O'Brien: They have handed in here schedules, as you know, back in July, schedules that they have never used in the case, and your theory is, if they turned over papers to us, that we ought to assume they are going to use in the case, we should get busy right away.

The Master: I am still waiting to hear any objection you want to make.

Mr. O'Brien: I have made my objection, and I have taken an exception to your ruling.

42264

Mr. Chambers: I want to make mine in full again. First, I except to the refusal to allow us preliminary cross-examination.

My objection in full is as follows: I object to these papers now offered on the ground they are incompetent, irrelevant, immaterial, secondary evidence, not common law proof; they deprive the defendants of the right of cross-examining the persons who made the apportionments and the appraisals, and they have for their foundation certain other matters, like the Row-

land appraisal and the books of the company, which are not in evidence for certain periods, and certain books for the later period of 1906 to 1918 are not in evidence. They find their foundation in those books, and we are entitled to have those properly proved, and have the right to cross-examine the persons who made the entries in the books. Furthermore, there is no testimony here showing exactly how these apportionments were made, or who made them, and they are misleading and confusing and wholly incompetent, in my judgment. 42265

The Master: Do you want to add anything, Major Clark? 42266

Mr. Clark: No, I join in the objection.

Mr. O'Brien: To make my objection formally, I object on the ground they are incompetent, irrelevant and immaterial, and on all the grounds set forth in my objections to the exhibits of the witness Teele, made I think on September 17, 1919; on the further ground that the witness Carter has admitted that he only checked up a few of these figures and that he has simply offered his satisfaction and his confidence in the reliability of these figures on the grounds that they do not on their face show that they are a reproduction of any particular pages of any particular books of account. They are a collection of figures gathered together, for aught we know at the present time without cross-examining the witness preliminarily—results of readjustments of figures. 42267

There are legal conclusions interspersed all through the papers; there is the inclusion of matters that, for aught we know, are entirely extraneous to the company's gas making business, and if these computations have been made and

42268 these figures gathered together by the expert accountant Teele, he ought to be produced here so we could cross-examine him, and if he is sick or absent, his absence ought to be explained and we ought to have the men who actually made the figures brought in here for cross-examination.

Of course, the objections I make to the Teele exhibits will apply here, that where there is underlying data we ought to have it, that if there is no underlying data in existence then we ought to know it, if there are original books of entry in which these costs are gathered together, where there are overheads added in the bookkeeping de-
42269 partment after bills have come in, we ought to have it. If this work was done here, all the way through, for affiliated companies, we ought to know it; if there are other figures entered in the books of the company at this time in order to allocate to the Consolidated Gas Company the amounts which they allege are chargeable to their accounts, then we ought to know that at this time and before these papers are received in evidence.

I object, of course, on the further grounds that I have already tried to express to your Honor, that this is no time to have matters of
42270 this kind brought into the case. This trial ought to end somewhere and we ought to finish it before we get into the year 1921. These matters should have been presented in the beginning, at the time they were offering their books; because if they were not in earnest, as during the later months of this trial they admitted they were not in earnest concerning the years 1906 to 1912, we ought to have had these figures in the very beginning so that the work would not have to be done over a second or a third time.

42271

But the whole thing, outside of the legal objections to it, does not spell equity, it does not spell good faith, it does not mean a frank disclosure. It means deception, it means confusion. If they were on the level and acting in good faith and they wanted to put the cards on the table before this Court, they would have come in here and they would say, "We will give you page for page the references for each one of these figures, we won't mislead you, we will try to save you time; we won't send you on a work with a large corps of accountants that will entail at least three-quarters of a year for analysis 42272
and investigation; we will tell you where to get it, we will lay the foundations by bringing in the books, and offering them in evidence, the actual books themselves and all the underlying data, and we will prove the books first."

There were a dozen different things they would have to do if they were acting in good faith in this matter, and I think it speaks volumes of the attitude of complainant in this case, your Honor, that they should come in at this time and call this rebuttal. What does it rebut? Where is the pretext for it? Because there was an error made in some of Mr. Maltbie's figures? 42273

The Master: Are you all through?

Mr. O'Brien: Those are my objections, your Honor, and I take an exception to your ruling.

The Master: I have not ruled yet.

Mr. Clark: Is the testimony here as to when these were given to us?

The Master: What?

Mr. Clark: Is the testimony here, or the record here?

Mr. Ransom: It is being looked up upstairs, I have not got it here.

42274 The Master: That is another matter that bears upon the time I will allow for cross-examination or to prepare for cross. The defendants having offered in evidence upon their theory of the case schedules showing what they claim to be adjusted book cost of the properties of the complainant company from 1884 to 1918, I shall receive these schedules in evidence as rebutting the proof offered by the defendants in the same form, and in the same manner as I took their proof, and will give the defendants a reasonable opportunity to point out the errors in the manner of preparing these schedules, or any errors 42275 in them as to figures. The objections are overruled, exceptions allowed, and the papers will be marked in evidence.

Mr. Chambers: Exception.

Mr. O'Brien: Is your Honor aware of the fact that Mr. Teele's exhibits, already received in evidence, cover the period from 1906 to date, and that as to those years these will be simply cumulative?

The Master: Yes. Schedule A described by Mr. Ransom will be Complainant's Exhibit 471.

Schedule A marked Complainant's Exhibit No. 471.

42276 Schedule B marked Complainant's Exhibit 472.

Schedule C marked Complainant's Exhibit No. 473.

Schedule D marked Complainant's Exhibit No. 474.

Schedule E marked Complainant's Exhibit No. 475.

Schedule F marked Complainant's Exhibit No. 476.

Mr. Chambers: Is it stated on the record that we have exact copies of these?

42277

Mr. Ransom: Yes, sir.

The Master: Now, let me see the record as to what was handed the other side, and I will dispose of the question of cross-examination.

Mr. Ransom: As soon as that comes down I will go ahead.

The Master: Well, go ahead with Mr. Carter then, if you want to. Have you any further exhibits—I suppose anyway you will want some time to look at these, will you?

Mr. Chambers: Yes.

The Master: I do not see any sense in going ahead with Mr. Carter at this time, if you have 42278
other proof to offer.

Mr. Ransom: I have a little more.

The Master: Well, I mean, have you other witnesses?

Mr. Ransom: I have other witnesses, yes.

The Master: Well, Mr. Carter will be withdrawn for the time being, and I will dispose of the time, when you are ready with his re-direct, to proceed with the cross.

Mr. O'Brien: Shouldn't he be required to finish with Mr. Carter now on the direct?

The Master: Not unless you are ready to go ahead with the cross. I want to give you an 42279
opportunity to prepare for cross.

Mr. O'Brien: Is he finished with Mr. Carter, with the rest of the preliminaries?

The Master: He says no, and I am ruling—

Mr. O'Brien: Why shouldn't he suffer the same rule that was imposed on us?

The Master: I am trying to do something for you gentlemen now, and now you won't have it.

Mr. Chambers: Suppose he comes on with a lot more schedules?

42280

The Master: Then I will give you more time. What I am trying to do is this: If I compel Judge Ransom to finish Mr. Carter's direct, I shall require you now to go forward with the cross. Now, so long as there is further direct, and you want time for cross, I am going to hold off the completion of the direct so that you will have in the meantime a chance to look at these, and then come forward with your cross, so that I will have the cross following right along.

Mr. O'Brien: I don't follow that logic. You say if you require Mr. Ransom to go ahead now

42281

with this witness and finish his direct, you will be required to compel us to go ahead with the cross when he finishes the direct?

The Master: Yes.

Mr. O'Brien: I don't see how that follows. Our rights would be the same, whether Mr. Ransom goes ahead with Mr. Carter now or not.

The Master: Call some other witness, Mr. Ransom. We will suspend with Mr. Carter until I dispose of this question of when I will press this cross. There won't be any further schedules that you are going to put in with Mr. Carter, is there?

42282

Mr. Ransom: There is a summary schedule, which was furnished to the defendants along with the schedules. That summary included 1919, complete, and I was obliged therefore, under your Honor's ruling yesterday, to revise that so as to leave that off, and that will be up here today.

The Master: Well, as soon as that comes you put Mr. Carter on and prove it, or whatever witness you want to put on and prove it, so that counsel for defendants can look at that in connection with these schedules.

42283

Mr. O'Brien: Your Honor, I have some doubt whether we received all of this data at that time.

The Master: Well, check it up.

Mr. O'Brien: I don't want to be understood as assenting to the proposition that we have had these tables.

The Master: Well, we will make sure of it.

Mr. Chambers: I will bring in what was given to me.

42284

H. W. TERRY, JR., called as a witness on behalf of the complainant, in rebuttal, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Terry, where do you reside?

A. Ossining, New York.

Q. What is your present position with the Consolidated Gas Company?

A. Acting chief chemist.

Q. And how long have you been such?

A. Since September 13, 1919.

Q. Prior to that were you engaged in gas testing and other phases of gas chemistry in the testing stations? 42285

A. I was.

Q. Of the complainant company?

A. Yes.

Q. For how many years have you been engaged in this kind of work for the Consolidated Company and its affiliated companies?

A. Eighteen years.

Q. What was your education before that? A. Four

years course in chemical engineering, University of Pennsylvania.

Q. You graduated?

A. Graduated with a degree, and two years later chemical engineer.

Q. Now at my request you have been engaged for a number of days in one of the rooms in this building in examining and checking these test sheets and sworn reports in relation to the candle power of gas put in evidence by the defendants?

A. I have.

42287 Q. You have not yet been able to complete that examination of all the so-called test sheets?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. Have you completed all of them yet?

A. No, I have not.

Q. Now, out of those so far examined and checked by you, have you compiled a list of some 510 purported city tests for which the test sheets checked by you have been returned back to the defendants for recomputation by Mr. Birdsley?

42288 Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. I have.

Q. Now, in your check of the computations purported to be recorded on these 510 test sheets, you used, did you not, the various tables furnished to you by Mr. Birdsley, a few days ago?

A. I did.

Q. That is, the logarithm tables and the tables for various corrections which are used in computing what is called the corrected illuminating power from the observed data?

A. I did.

The Master: That is, the temperature table and the candle burning and the barometric table?

The Witness: Yes.

Q. Now, in your checking of the computations on those 510 tests sheets, you have used and assumed for this purpose the correctness of the data recorded by the city tester upon his test sheets as representing his observations?

A. I did.

Q. You of course don't know whether the City tester correctly observed what he put down, and 42290
whether he correctly put down what he observed?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, that is conversation, your Honor.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. I do not know.

Q. Assuming the correctness of the city tables, and assuming the correctness of the observed data shown on those 510 test sheets, did you find that what is called and certified as the corrected illuminating power was correctly computed by the city testers?

Mr. O'Brien: I object to this as incompetent, 42291
irrelevant and immaterial, and as following the same practice that I have protested against right along, of incorporating into questions conclusions of law and conclusions of fact, the use of the word corrected. If he went through a mathematical process and found a different result, it is a very easy matter to put a question to him to bring that out, without assuming in his question that there is something incorrect. Now, I object—

Mr. Chambers: I want to object on the ground that it calls for the conclusion of the witness, and the most that he should be allowed to state, if anything, would be what he has done in regard to checking these, and how he did it, and what the result was, without drawing the conclusion, that is for the Master to draw. He can't say, checking a lot of those, that they are incorrect, and I object on the ground that it is incompetent.

The Master: Objection overruled.

Mr. Chambers: Exception.

42293 Q. Will you answer the question?

Mr. Clark: I join in that, and take an exception.

Mr. Ransom: Read the question.

(The question was read by the stenographer.)

A. No, not in any case.

Mr. O'Brien: There you are again.

The Master: Not in any case of those 510.

The Witness: Not in any of those 510.

Mr. O'Brien: That illustrates what we have said. He cannot say that his is correct. That is a conclusion.

The Master: Sure. I will get at it in a minute.

42294 Mr. O'Brien: Now, I am going to make a further motion to strike out on the ground that they are now impugning their own testimony.

The Master: Objection overruled.

Mr. O'Brien: You have received in evidence here manufacturing books that have set forth day after day for those stations the tests made by their own men, which confirm the tests made by the City.

The Master: Objection overruled.

Mr. O'Brien: And now by producing this wit-

ness and undertaking to question the tests made by the City and call them incorrect, they are really impugning the testimony that is already in this case in the manufacturing books that set forth from day to day the tests made at 79th Street and the stations by their own men, their own people.

The Master: I won't hear any more. Next question.

Mr. O'Brien: Not only that, your Honor, but they impugn their own—

The Master (interrupting): I said I won't 42296
hear any more.

Mr. O'Brien: This is another phase of the same objection. You have the testimony of the witness Woods—

The Master (interrupting): I said I would not hear any more. I said I did not want to hear any more of this discussion.

Mr. Ransom: I object to this continuous Vesuvius of verbosity.

Mr. O'Brien: I except to your Honor's ruling that you will not strike the question and answer out.

The Master: Right.

42297

Q. Mr. Terry, have you made up—

The Master (interrupting): Before you do that, Mr. Terry, what did you do, how did you work?

The Witness: I took that—have you that data sheet there? I just took their observations and totalled up and checked their additions and then checked their observed candle power, the barometer, the time of the burning of the candles and the temperature and took the tables submitted, and found the logarithms, and then from that—

The Master (interrupting): Made your computations?

The Witness: Made a computation.

The Master: And you reached figures other than theirs?

The Witness: Yes.

The Master: And that is why you say they were incorrect?

The Witness: Yes.

The Master: Because your figures differed from theirs?

42299 The Witness: Yes.

The Master: Now, show me the difference, and I will decide who is right and who is wrong.

Q. Now, for convenience, Mr. Terry, have you had made—

Mr. O'Brien (interrupting): Your Honor, we have the manufacturing records here.

Mr. Ransom: What has that got to do with it?

The Master: We are on this. Let us get this proof.

Mr. O'Brien: Well, I want them to bring in the papers and let us see the computations made. We do not want any more of this capsule testi-

42300 mony, testimony in capsule form.

The Master: I will rule on this as it goes along. Mr. Birdsley has all these figures already, he is checking them up.

Q. Mr. Terry, have you for convenience made up in tabulation form the results of your checking and recomputation of those 510 test sheets, on the basis which I have indicated?

A. Yes, that is the schedule (indicating).

Q. That is, this table is made up with eight columns, the first showing the station, second the no-

tation of the gas claimed to be tested as shown on the test sheet, is that right? A. Yes, sir.

Q. The third the date on which the test was made according to the test sheets?

A. Yes.

Q. The fourth is the time on that day when the test was made, according to the test sheet?

A. Yes.

Q. The fifth column is the name of the tester, signed to the test sheet?

A. Yes.

Q. And on the sixth column you have taken from 42302
the test sheet the candle power computed as the corrected illuminating power by the tester?

A. Yes.

Q. And in the seventh column you have put the result of your computation?

A. Yes, my computation.

Q. That is, using the City tables, and the observed data shown on the test sheet, and you reached the result shown in the seventh column rather than the result shown in the sixth column?

A. I have.

Q. And the eighth column you have left blank for the possible notation of the candlepower if Mr. 42303
Birdsley should compute it from the same data and the same tables?

A. I have.

Q. Now, if I interrogated you as to each of these different test sheets, you would testify setting forth the words and figures here shown with respect to each of those test sheets?

A. I would.

Q. And the figures given in column seven are correct computations, to your best judgment and ability, if it be assumed that the City tables are correct?

The Master: You have gone all over that.

Q. And that the observations were correctly made and correctly noted?

A. Yes.

Mr. O'Brien: I object to that.

The Master: Yes.

Mr. Ransom: Now, for convenience I offer this testimony in this tabular form.

The Master: I understand that this information on these sheets is precisely the information given to Mr. Birdsley from time to time
42305 during the last few days, in anticipation of this proof?

Mr. Ransom: It is. That is, he has been given this list in installments, instead of in the form of combined—all combined together.

The Master: Any objection to this?

Mr. Chambers: Yes.

The Master: Let us hear it.

Mr. Chambers: Let us see it.

Mr. Ransom: I haven't the requisite number of copies. I will have some made promptly. I can give you two of them this morning, and I will have some more later.

42306 Mr. Chambers: In the first place I think the title ought to be stricken out, it draws conclusions.

The Master: If I start to strike out titles, I will be busy the rest of the summer.

Mr. Chambers: It shows, "Claimed by complainant to show incorrect computations."

The Master: I won't strike out anything.

Mr. Chambers: Exception. What does 11-20 mean, 1920?

42307

The Witness: The year is at the head of the sheet.

Mr. Chambers: What is the date 11-20?

The Witness: November 20th.

Mr. Chambers: I object to it as irrelevant, incompetent and immaterial

The Master: Any further objection?

Mr. Chambers: Irrelevant, incompetent and immaterial.

The Master: Objection overruled.

Mr. Chambers: And drawing a conclusion.

42308

Mr. O'Brien: Will you permit us to examine this witness before the exhibits are received?

The Master: No. Objection overruled.

Mr. O'Brien: I object to it on the ground that they have not got the figures here from which the computations were made; on the ground that the witness has not made all these computations himself; on the ground that the title to the paper involves and sets forth a legal conclusion.

The Master: Objection overruled, the paper will be received as Exhibit 477.

Mr. O'Brien: Exception.

42309

Q. Mr. Terry, you did make all of those computations yourself?

A. I did.

The Master: He already said so.

Mr. Ransom: That is all.

The Master: Cross-examination.

Mr. Clark: I sent for those things Mr. Birdsley has, and I really need them for cross-examination of this witness.

Mr. Chambers: Yes, I suggest that you suspend the cross-examination until we can get Mr. Birdsley over here.

The Master: Any objection?

Mr. Ransom: No.

The Master: I will suspend it.

Mr. Ransom: I want to give them every opportunity to show that any of these are correct.

The Master: Get your next witness.

Mr. O'Brien: I suggest, your Honor, that for the purpose of cross-examination of the witness the complainant be requested to deliver either the manufacturing records of the 99th Street and 21st Street stations—

42311 The Master (interrupting): No, I won't allow that because it is not of the slightest interest, it has not the slightest thing to do with this testimony. It may have something to do with your argument, but nothing at all to do with his testimony.

Mr. O'Brien: It will have a lot to do with my cross-examination of Mr. Terry.

The Master: I won't make any such direction because it is useless.

Mr. O'Brien: Well, I take an exception to your Honor's ruling.

42312

GEORGE W. DOANE, called in rebuttal, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Doane, you are president and general manager of the National Coal & Coke Company?

A. I am.

Q. How long have you been connected with the gas business in New York City?

A. Since 1873.

Q. Did you hold a position at that time with one of the companies which later became a part of the Consolidated?

A. Yes.

Q. What company, or what companies, and what office?

A. I was made secretary in 1875 of the New York Gas Light Co.

Q. Well, have you been continuously associated with the gas business here since that time?

A. I have.

Q. To what extent during that period have you 42314
been familiar with the sale of gas house coke in the City of New York?

A. Shortly after I was appointed secretary in 1875, I was delegated the supervision of the sale and the distribution of the coke which was put out by or sold by the New York Gas Light Co.

Q. That company's only plant was a coal gas plant?

A. Coal gas plant at that time.

Q. Located where?

A. At 21st Street and East River.

Q. And you have been in touch with the coke situation in New York ever since that time?

A. I have. 42315

Q. Now, upon consolidation in 1884, what position did you hold with the Consolidated Company?

A. I was superintendent and general manager of their business south of Houston Street. Shortly afterwards I was made treasurer of the Consolidated Gas Company.

Q. How long were you treasurer?

A. Five or six years.

Q. And then you became president of the—

A. (Interrupting.) Companies with which I am

identified now, the New Amsterdam Company, the Northern Union Company, vice president and general manager of the East River Company, and president and general manager of the National Coke & Coal Co.

Q. Did anything take place in 1901, so far as the coke situation in New York and your relation to it?

Mr. O'Brien: I object to it as irrelevant and immaterial.

Mr. Chambers: I object to it as rather antiquated and ancient.

42317 The Master: Objection overruled.

Mr. O'Brien: I object to it as vague.

The Master: Objection overruled.

Mr. O'Brien: Did anything take place in 1901?

The Master: The witness will say yes or no, and then we will find out what it is. Did something take place in 1901, Mr. Doane, just yes or no.

The Witness: Yes.

The Master: Well, what took place then?

The Witness: The coke had accumulated at that time in the stations at 42nd Street, 18th

42318 Street and 14th Street to such an extent that it was interfering very much with the operations of the plant, and it became necessary that something should be done in order to create a broader and a more extended market for the use of coke.

Q. That is, up to that time the Consolidated had been trying to dispose of its coke through outside contractors?

Mr. O'Brien: Objected to as leading.

The Master: Objection overruled.

Q. Well, what was done as a result of this situation?

The Master: I did not get an answer to that last question. How had the coke been handled before 1901?

The Witness: Before 1901 the coke had been sold through the medium of three contracting firms. One was Judge Murray, who handled the coke put out by the 42nd Street station; Duffy, who handled the coke manufactured at 18th Street, and McWilliams, who handled it at 14th Street, and they sold what coke they could that was manufactured by the gas company.

Q. What was done in 1901, for the purpose which 42320
you have indicated?

A. In 1901, for the purpose of broadening and extending the market of coke, after considerable thought, this National Coke & Coal Company was organized for that purpose.

Q. Organized to take over the retail business?

A. Organized to take over the retail business of the sale of coke in New York.

Q. What became your relation at that time to the National Coke & Coal Company?

A. I was one of the directors of the Company at the time of its organization, and after a few months of operation they made me president and general 42321
manager.

Q. You have ever since been that?

A. I have held that position since.

Q. You have been in continuous touch with the disposal of the coke from the various plants?

A. I have.

Q. And have you had occasion to give a good deal of personal attention to the sale of the company's coke during these years, and the conditions affecting that sale?

A. Giving daily attention to it since then.

Q. And what has been the situation with respect to the quantity of coke and the efforts made to dispose of it?

Mr. O'Brien: Your Honor, I think that is all together leading.

The Master: Overruled. Proceed. What has been the situation with reference to disposing of the coke, what efforts have you made, what have you done?

The Witness: At that time, as I say, the coke
42323 had accumulated to an extent of some 30,000 or 40,000 tons.

Mr. O'Brien: You are talking about 1901 now.

The Witness: Yes, 1901. The first effort was to get this coke to move, and the second was to endeavor to get higher selling prices. It took about from two to three years to dispose of that accumulation, in addition to what we were manufacturing in the plants. At the end of the year we were able to boost up the price 50 cents a ton, and from time to time have since been able to dispose of the output at advancing prices, until at the present time we are getting $8.50 per
42324 50 bushels, which is an equivalent to a ton sold.

The Master: And you sell it in bags?

The Witness: We do sell it in bags, but to a limited extent. We sell it in bulk. On the basis of bushels. We do not sell by weight, we differ from most coke companies in that respect, that we sell by bushel rather than by weight.

Q. That is 50 bushels is equivalent to a ton?

A. Is practically equivalent to a ton.

Q. And what is your present price?

A. $8.50.

Q. Now, how much coke, annually, on the average, has been sold through this medium?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, the books are the best evidence of that.

The Master: Overruled, I will take Mr. Doane's statement.

Mr. O'Brien: Exception.

A. It is difficult for me to tell you what would be the average sales during the term of years, but the maximum sales that we were ever able to reach in any one year was about five years ago, when they 42326
reached about 125,000 tons a year.

Q. Well, at the present time are you selling that amount, or very much less?

A. At the present time we are selling about 200 or 250 loads a day.

Q. That makes about how much?

A. Well, I would not want to say that the sales at the present time would equal that in midsummer.

Q. Yes, I understand. What would be your estimate of the present sales per year?

A. At the present time I do not think the sales would be more than 50,000 to 75,000 tons a year.

The Master: Why is that? Don't you pro- 42327
duce it?

The Witness: No. We might if—we could sell more, if we had a constant uninterrupted supply. The amount we are selling now is as much as the Gas Company can part with at the present time.

Q. Now, what do you say as to the relationship between coke and anthracite coal, as a fuel?

Mr. O'Brien: That is rather indefinite.

Q. Well, from the market proposition, is coke a substitute for anthracite coal?

Mr. O'Brien: I object to that as incompetent irrelevant and immaterial.

The Master: I think I will allow it.

Mr. O'Brien: Exception.

The Witness: In the sale of coke you must not lose sight of the fact that coke is a substitute for anthracite coal, and when you go to a person who is using anthracite coal, you ask them to use this as a substitute fuel, and the conclusions that I have come to during all these years in the trade, as a result of the information
42829 that I get not only from the people to whom I sell coke

Mr. O'Brien (interrupting): Mr. Deane, just a minute. I object, your Honor, that the question has been answered, and the witness is now volunteering some information.

The Master: I will take it.

Mr. O'Brien: Uncalled for by the question.

The Master: Yes, I have that in mind, but I will take it, I think it may save some time.

Mr. O'Brien: Exception.

The Master: What is the conclusion you reached?

42830 The Witness: The conclusion I reached was that the relative value of coke to anthracite coal, that is the price, the maximum price that you can expect to get for it if it is to be sold in large quantities is two-thirds of the retail selling price of anthracite coal.

Q. That is as a practicable working commercial matter, you have got to maintain that relationship?

Mr. O'Brien: I object to these decorations that the interrogator is now putting on the statement made by the witness, your Honor.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: Is that what you mean to say, Mr. Doane, that in order to sell coke you have got to sell it for about two-thirds?

The Witness: To sell it in quantity, you have to have that margin. Of course, you can sell a small quantity to people who would have to have coke and would be willing to pay any price, but to sell it in a quantity that would represent taking care of the output of a large company, you could not expect to get more than that price. 42332

The Master: Well is there any limit to the amount of coke that can be sold here at a price?

The Witness: I think coke at a price could be sold in almost unlimited quantity, at a price.

The Master: At the price you have been referring to, always having it less than anthracite coal?

The Witness: That is the only reason, I came to that conclusion, after going back over these twenty years, it will be found progressively, as the price has advanced, that same ratio has been maintained. For instance, when coke, in 1901, when the retail price of coal was $5 or $5.50, 42333 $3.00 to $3.50 was the ruling price for coke.

Q. What is the bulk of a ton of coke as compared to the bulk of anthracite coal?

A. A ton of gas house coke has 79.50 cubic feet, and a ton of Lehigh stove coal is 34.39 cubic feet. Connellsville coke, a ton has 76.04 cubic feet.

Q. That is, the cubical contents of 50 bushels of gas house coke, which you say is practically a ton, is 79 1/2 cubic feet?

A. Yes.

Q. To what class of consumers are you now selling coke?

A. We sell it to—our consumers now are the cheaper grades of apartment houses, bakeries, laundries, the cheaper grades of restaurants, to a moderate degree metallurgical businesses, and domestic users to some extent.

Q. Could you state about what percentage of that sale, or what proportion, is made to domestic users?

A. I should say not more than ten per cent only to strictly domestic users.

42335 Q. Are those sales largely in the City of New York?

A. Practically all in the City of New York.

Q. What has been your experience as to your ability to make sales of coke in any quantity outside of the City of New York?

A. From time to time during these years we have tried to sell coke to the towns that were accessible by water along the Sound and up the Hudson River, but we never sold coke in any quantity that way.

The Master: Why?

The Witness: We never could get them interested. The reason is, as soon as we went, say,

42336 to Bridgeport, or to New Haven or towns along the Hudson River, we came immediately in competition with fuel which was delivered to them by boats, representing the lowest rate of freight, and we found that the only persons that we could get interested in quantity, were people that were using low grade fuels, steam buckwheat and soft coal, and we then found that the price at which they got that fuel was so low that it made it necessary for us to sacrifice our price to such an extent that there was no advantage to us in attempting to get that trade.

Q. Are there also in those towns to which coke might be taken by water, some concerns which manufacture coke themselves?

A. Up in New Haven we met that competition. New Haven has had coal gas plants manufacturing coke, and we met their competition. They of course sell to Bridgeport and to other small places, and that made it prohibitive for us to expect to get in there.

Q. So that on the whole situation, you have not been able to dispose of quantities of coke in these seaboard and Hudson River places at a price at which you could afford to do it? 42338

A. No. Occasionally we would send a load up to the brickmakers at Haverstraw, and along the river, but that always meant that it was the cheapest grade of coke that we had, the fine small stuff that we were able to quote a price that was sufficiently low to be attractive to them on account of its economy.

Q. Well, in addition in the last few years have you had to meet the competition of a very large plant of the Seaboard By-products Company located on the water?

A. Yes, we are a direct competitor of them now, and they are very advantageously located, more advantageously than we are, to reach trade by water. 42339 They can handle coke very much more economically than we can.

Q. Better shipping facilities?

A. Better shipping facilities.

Q. For getting to these otherwise possible markets?

A. Yes.

Mr. O'Brien: I do not like these hothouse questions, your Honor. I won't take up your time in objecting to some of them, but this is a stereotyped milk-fed line of testimony.

Q. Well, so far as the New England territory might be available, are there coking plants, you mention New Haven, also at Bridgeport?

A. No, not at Bridgeport.

Q. There is no concern there making coke?

A. No.

Q. Providence?

A. Providence, yes.

Q. And also some coke made in Boston?

A. Large quantities in Boston.

Q. What has been the experience of the company
12341 in getting coal dealers to handle coke in this area?

A. From time to time we have felt that if we could get the coal dealers to handle our output it would help us very much in marketing it, but we never have been able to get them interested, and the reason for it apparently is that they have an established trade on anthracite coal of the best grades here in New York City. The public are familiar with that, and to attempt to sell coke would require that they would have to educate their consumers with the advantage of using coke for coal, and unless the coke could be sold to them at a price which would be so low as to sell itself on account of the price, the coal dealers
12342 have never been willing to put the energy and personal effort into the sale of coke to make it go. Where we have placed cargoes of coke with the dealers, long periods of time have elapsed before it has been disposed of, and we never have been able to get in the second cargo.

Q. So that the plan and effort of trying to get coal dealers to create and be the medium of any considerable market for gas house coke has not worked out?

A. It has not worked out. And another reason is that the coal dealer at times reaches a period when

it is difficult to get coal, and if he has been handling a fuel in competition with anthracite coal he has antagonized, to a certain degree, the wholesale dealers, and when the question of favoritism comes up at a period of interruption of traffic and so forth, he is not going to be shown a great deal of consideration by the wholesale dealer to keep his bins supplied when there is a shortage. And this, I have been told by the dealers, is one of the reasons why they do not want to handle coke.

Q. So that, as a practical matter under the New York situation, you have found that about all you 42344
could do with coke was through your own efforts and service?

A. Our own personal efforts.

Q. Now, what has been your experience, as a result of your efforts in selling coke to what might be called the large, high-grade apartment houses of New York City?

A. We have met with but very little success in that respect. The reason is that the modern high-grade houses have in them modern up-to-date furnaces for using the cheaper grades of fuel, such as buckwheat and rice, and as those fuels sell for one-half the selling price of domestic fuel, that makes it prohibitive 42345
for us to attempt to supply them at the price which we are striving to get.

Q. Or that you could afford to sell it for?

A. Or that we could afford to sell it for.

Q. What about—does coke require more or less frequent attention in charging and coaling the fires and manipulating the drafts and like?

Mr. O'Brien: I object to that, the witness has not shown any qualifications as to the boiler room.

42346 George W. Deane, Direct.

The Master: That is allowed.

Mr. O'Brien: Exception.

A. Coke is a friable fuel, and ignites readily. It requires careful manipulation of the drafts to prevent the up and down of a very hot fire fading away to a smaller fire; it requires nicer and closer attention on the part of the janitor and his assistants, and our experience has been that the janitor and the assistants unless they are bribed to do it, are not willing to pay the amount of attention that is required to make coke burn economically, and satisfactorily, and the result
42347 would be that if for any reason the heat in the building is not satisfactory to the tenants the janitor will reply that it is due to the fuel, and that makes it difficult for us to get in.

Q. That is, it requires a higher degree of competency on the part of the attendants of the furnace?

Mr. O'Brien: I object to that as leading.

The Master: Question allowed.

A. Coke has got to be fired with more attention, more careful attention, more consideration than anthracite coal.

Mr. O'Brien: Your Honor, I did not hear anybody exclaim at this indictment against the
42348 janitors of the City.

Q. Has it been within your practical experience that the apartment house owners cannot get the janitors to handle coke?

A. It is difficult to do it.

Mr. O'Brien: Well, you say they have got to be bribed, that is what you say.

The Master: Don't answer that just now, Mr. Deane.

Q. Now, what has been your experience, and what experience have you had with hotels and restaurants in inducing them to use coke as fuel for their ranges?

A. The large hotels and restaurants we have always felt would be a very productive outlet for large quantities of coke, if we could get them to use it, but we very soon found that in the large hotels and large restaurants they needed a steady, constant fire for broiling and baking purposes particularly.

Q. Beds of coal?

A. Beds of coal that were solid and maintained their heat for long periods of time. Now, coke being a friable fuel, and burning very readily, has got to be replaced very frequently and that up and down condition of the bed of fuel has worked against our 42350
introduction into these large hotels. And that was up to five years ago. At the present time I think I can without inaccuracy state that the gas companies have installed gas ranges in those large hotels and restaurants that may be measured by miles, and that has put that class of customers entirely out of the market now for the use of coke.

Q. Rather than use the high grade coals which would give a lasting bed of live coals, they have found they can get results through these appliances in using gas?

A. Yes.

Q. Now, has there been any change in the coke 42351
market situation in New York City in recent years by reason of the fact that most of the railroads operating into New York City have now been electrified for a considerable number of miles from the city?

Mr. O'Brien: Objected to as assuming a fact not proven in the case.

The Master: I will allow the question so far as it carries with it the thought whether the electrification of roads so far as it has gone has affected the coke situation.

A. For many years, or for fifteen years, one of

our largest outlets of coke was to the New York Central and the New Haven Railroads. Under restrictions put upon them by the Board of Health they were prohibited from making a nuisance of smoke, and coke being very largely a smokeless fuel, we found a large outlet there in the sale of coke to carry their locomotives through the tunnel and outside of the city precincts. But now that the railroads have been electrified, they have stopped all orders for coke, and although we approach them periodically with the effort to sell them coal, we are unable to do so at the
42353 present time.

Q. That is, the New York Central, for example, has been electrified for about how many miles from New York City?

A. Well, some distance; up Spuyten Duyvil.

Q. Well, isn't it as far as Harmon?

A. I do not know. I could not tell you about that.

Q. And the New Haven likewise?

A. Yes.

Q. As far as Stamford, I believe?

A. Stamford and New Haven.

The Master: The Pennsylvania as far as the Manhattan transfer?

42354 Mr. O'Brien: Well, now, we will come to the Erie in a minute.

The Master: Well, the Pennsylvania, the New York Central and the New Haven and part of the Long Island system are electrified.

Q. How about the Long Island?

Mr. O'Brien: The Master will take judicial notice of it.

The Master: Practically to Jamaica. No, I do not think I can do that, but I am asking the witness whether that is not so.

Mr. O'Brien: Well, there is no testimony in the case as yet that they sold in the other days—

The Master: Yes, there is.

Mr. O'Brien: Before electrification.

The Master: Mr. Doane said he did.

Mr. O'Brien: To the Long Island Railroad?

The Master: He said to the railroads.

Mr. O'Brien: And the Pennsylvania Railroad?

The Master: Did you sell the Pennsylvania?

Mr. O'Brien: He just mentioned the New York Central and the New Haven. 42356

The Witness: No, we did not sell the Pennsylvania.

The Master: Did you sell the New Haven?

The Witness: Yes.

The Master: The New York Central?

The Witness: Yes.

The Master: And the New Haven is now electrified as far as Stamford?

The Witness: Yes.

The Master: That is about fifty miles. And the New York Central is now electrified to Harman, which is about thirty odd miles.

Mr. Chambers: He said he did not know. 42357

The Witness: I did not know about that. I knew they were electrified outside of New York City.

Q. Well, the other roads entering New York City or operating on Long Island or running into Jersey City and Hoboken, did they use coke prior to electrification?

A. No.

Q. The only two that you know of who used coke on their engines were those two which you supplied?

A. Yes, sir.

The Master: That ran into Manhattan?

The Witness: That ran into Manhattan.

Q. If we were to assume, Mr. Doane, that additional plant facilities were provided at Astoria or elsewhere for the production of gas by the chamber oven or other process, by reason of which there would be produced for sale daily in addition to the quantities now produced by the retorts, 1,000 or 1,200 tons of coal, would you state—

The Master: A day?

Mr. Ransom: Yes.

42359 Q. Will you state your opinion as to the possibility of disposing of that quantity of coke, or any major part thereof, at present day prices, either in New York City or at some point adjacent thereto to which the coke could practicably be transported?

A. It would be impossible.

Mr. Clark: I object to the question, it assumes something that is not in evidence.

The Master: I have assumed the question to mean whether in Mr. Doane's opinion, if 1,000 or 1,200 tons of coke were produced a day, he would be able to sell it in this market, whether he would be able to sell it at present day prices

42360 or anything like it?

The Witness: It would be impossible at present day prices.

The Master: Or anything like it?

The Witness: Or anything like it.

Mr. O'Brien: You mean at present day prices of coke?

The Witness: Present day prices of coke and coal.

Mr. O'Brien: Coke and coal?

The Witness: Yes. The relative relationship between coke and coal, the present relation.

that is the $8.50 that we are getting at the present time for coke.

Q. Or anything like that?

A. Or anything like that.

Mr. O'Brien: Well, I object to that leading stuff, "at anything like it."

The Master: Objection overruled.

Q. What, in your opinion, and from your experience, is the total cost of the handling and disposing of coke from the time it is received from the retorts until it is delivered to the consumer?

Mr. O'Brien: Read the question. 42362

The Master: Strike out "what in your opinion." What is the cost?

Mr. O'Brien: I object to that, your Honor, the witness is not qualified on that.

Mr. Chambers: I object as incompetent, irrelevant and immaterial.

Mr. O'Brien: There has been testimony given by Mr. Woods and—

Mr. Ransom: And Mr. Little. I will withdraw that question and ask Mr. Doane this:

Q. It has been testified by Mr. Little, an expert called by the defendants in this case, that in his judgment, and from such knowledge as he had of 42363
New York City conditions, the total cost of handling and disposing of coke from the time it is received from the retort until it is delivered to the final consumer, is approximately $4 a ton. Is that in accord with your experience, the actual cost of this company?

A. I think that is a fair estimate.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial, and improper.

The Master: Overruled. The witness agrees with Mr. Little. I thought Mr. Little said $2 a ton.

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The Witness: No, $4.

The Master: Then there isn't any dispute about that. Who was it said $2, Dr. Bemis?

Q. It has been testified in this case by Mr. Little, in behalf of the defendants, that he thought there was a large and substantial market for coke in Long Island City, especially in view of the manufacturing development in Long Island City. What have you to say, from your knowledge of conditions there and your experience with respect to the successive efforts to use that as a market?

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A. There has been a large industrial development in Long Island City, and the factories that have been erected there in the last few years are large and modern, but I was going to say without exception, I think in most cases, with but two exceptions, all of those factories purchase their power from the electric companies, both for lighting and power, so that the only outlet for the sale of coke among those factories would be for the purpose of heating the buildings. That necessarily is a limited amount, and as they are modern buildings and have modern installations, they are enabled to use the cheaper grades of fuel, such as buckwheat and rice, and that would make it necessary, if we went in there, to meet that price, which is

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about one-half of the selling price of domestic sizes of coal. So that that would seem to me to make it a very difficult matter to make any sales there to amount to anything.

Q. And you have found it so?

A. I have found it so. Although we manufacture the coke over there, we have made very few sales there in that vicinity on that account.

Mr. O'Brien: Your Honor, I would like to have counsel cautioned to avoid leading the witness.

The Master: No, I will allow leading questions where I think it can do no harm and save time.

Q. What have you to say, from your knowledge of the conditions and your experience in the selling of coke, with respect to the possible sale of coke to what you might call the domestic trade in the Long Island City area, adjacent to the industrial development? Have you found that you could sell any considerable quantity of coke, or that they would use any considerable quantity of coke for domestic purposes over there? 42368

A. Long Island City is built up almost exclusively of low grade apartment houses and the smaller cottages and two and three-family houses that are occupied by artisans. They use gas exclusively as the fuel in their kitchens, and the amount of fuel that they would use for heating purposes is relatively small, and would only be available in midwinter.

Q. So that as a matter of fact, in Long Island City you have not found that you could dispose of coke over there at any price at which you could possibly afford to sell it?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. 42369

The Master: I will sustain the objection. We have had enough of it.

Mr. Ransom: Exception.

Q. Are there any substantial number of foundries or blast furnaces in Long Island City?

A. Very few.

Q. Are there many in the Greater New York district?

A. Comparatively few in New York.

Q. Have you found that there was much or little outlet locally for coke for metallurgical purposes?

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A. We sell a little coke for metallugical purposes, but it is not a large factor with us.

Q. Not much possible demand that you can find?

A. Not much possible demand.

The Master: And that can be created?

The Witness: I think not. They are not here. It is an industry that is not here except in a small way here and there, and as a rule they prefer the strictly foundry coke, which they get from the coke regions.

Q. Reference has been made by one of the witnesses to the possibility of retaining coke in paper bags. Have you had any experience in that respect, and if so, what has been the success and results of your efforts to dispose of coke in that way?

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A. Several years ago my attention was called to the efforts being made by the Boston Company to sell coke in paper bags, and an investigation that I made led me to try it here. We very soon found that coke, being a porous fuel and always having a considerable percentage of moisture in it, and in rainy weather and wet weather having a large percentage of moisture, that the bags which necessarily had to be small, holding from ten to twenty pounds of coke, became affected with the moisture in the coke, the paper softened and the peddlers, the cellar peddlers and the small corner groceries, which were the outlets through which we expected to reach the tenement house district, found that the coke bags would collapse, and that they could not handle it, and it was apparent to us in a very few weeks that we would have to drop it, that it would be an entirely impracticable way to sell coke in large quantities. We have sold, and are selling now, considerable coke in burlap bags, but the paper bag was an impracticable proposition.

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The Master: Well, the burlap bags are pretty expensive just now.

The Witness: Yes, very expensive, just now they are very expensive.

The Master: Is there a great loss in those bags to use a lot of them?

The Witness: No, the consumer has to bring his bag with him, we sell it to them in the yard they bring the bag and we fill it. Winter before last we had coming to our yards from 6,000 to 7,000 people every day who took away with them on sleds and wagons and baby carriages and 42374
in automobiles and everything you could think of coke in these burlap bags.

A. That was during the time of the coal shortage.

A. That was during the time of the coal shortage. At the present time that outlet is moderate. I presume now we would sell 400 or 500 bags at a yard when we sold 3,000 or 4,000 bags in a yard.

Q. In what period of time?

A. A day.

Q. Have you in your efforts to dispose of coke tried advertising, and if so, with what result?

A. We have tried all kinds of advertising, newspaper advertising to a moderate degree. We have 42375
tried billboard advertising to quite an extent, and we have tried street car advertising. The kind of advertising that we have got the most results from is a circular letter advertising addressed to people that we have reason to believe from consulting the directories or information that came in in any other way, might be reached by the sale of coke and then by following up on inquiry with a personal interview from our salesmen and canvassers. That has led to practical results. But the advertising that we did in the newspapers and in the street cars and billboard never brought us any appreciable results.

Q. That is, you found the only way that you could get results in any appreciable degree, was by having canvassers skilled in the business who went to call on persons whom you had actual reason to believe might be interested?

A. Yes, and follow it up with a demonstration and go so far as to give them samples of coke to get them started.

Q. What do you mean by a demonstration?

A. I mean where we would give them bags of coke, a bushel or two bushels of coke, and where their fur-
42377 naces and boilers did not seem to be suited, we would coach them about regulation of drafts and stoking of the fires, particularly to hold the fire over night.

Mr. O'Brien: When was that?

The Witness: That has been going on all of this period of years down to the present time; we are still doing it now.

Q. That is, you found that you cannot dispose of even the coke you do in any other way?

Mr. O'Brien: I object to that as leading.

The Master: Overruled.

Q. Is that true?

A. That is true.

42378 Mr. Ransom: I think that is all.

By the Master:

Q. Mr. Doane, I remember when I was a boy around New York here I used to see a great deal of coke around the street, but in recent years I don't seem to have seen so much. What is the reason for that?

A. The people on the east and west side live entirely differently now from what they did thirty years ago. They live now in tenement houses and apartment houses. Then the City was largely built up of three and four-story houses in which two and three

families lived. At that time the selling of gas as a fuel for cooking was comparatively unknown. All the cooking was done in the old-fashioned coal stoves in the kitchen, and in those houses there were also fireplaces. Coke is an ideal fireplace fuel, and in all these houses—

Mr. O'Brien: I don't want to interrupt this conversation when we get around the fireside, it would be very interesting as a clubhouse conversation, but I am going to object to it here. It involves all kinds of opinions, it involves assumed facts. Are we going to let him roam the 42380
rest of the morning in answer to a question about your boyhood days?

The Master: Yes.

Mr. O'Brien: I am objecting to it.

The Master: Objection overruled.

Mr. O'Brien: I call your attention to how cross you were when Mr. Edgerton was on the stand, when he used to get a little further than just answering yes or no.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. (Continued.) That made an outlet for coke. Coke was used by these people in their houses and 42381
kitchens as a household fuel.

Q. Coal was much cheaper in those days?

A. Yes, and so was coke. The ruling price was $2.75 per chauldron, of 36 bushels. At that time coal was selling for $5 a ton.

By Mr. Vilas:

Q. What would that be a ton for coke?

A. $3.60.

By the Master:

Q. And coal you say was selling at $5 a ton?

A. About $5.50 delivered.

Q. It seems to me I remember it cheaper than that.

A. I took pains to verify my notes—

Mr. O'Brien: I object to this.

The Master: Your objection is overruled.

Mr. O'Brien: Exception.

Q. My impression was that coal was much cheaper in those days than 85.

A. In 1901, the selling price for broken and egg coal was 85.

Q. I am talking about the eighties?

A. Oh, prior to that, yes, if you went back twenty
42383 years further.

Q. I am talking about the eighties.

A. If you went back further, it was.

Q. Coke was used then extensively, when coal was pretty cheap?

A. Yes, coke was used extensively.

Q. When coal was cheap?

A. Yes, sir.

Q. How was that?

A. Now, you are going back a long, long ways.

Q. Well, I am older than I look, that is the answer to it. My recollection is very distinct back since 1880.

42384 Mr. Chambers: The Master is in ancient history now.

The Master: I am trying to bring out—Mr. Doane has said that coke must be sold practically at about two-thirds of the price of coal. Now, I was interested in knowing why it was that in the eighties, as I recall it—it is purely an impression, because I didn't know anything about it very much, but I had the impression that coal was much cheaper than 85 a ton, based on what we used to pay for coal when we bought it and used it, and I used to see a lot of coke around.

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The Witness: The gas companies sold a very large part of their coke.

Mr. O'Brien: Is this on the record?

The Master: Yes, it is on the record. I imagine you want it.

Mr. O'Brien: I don't want anything except where we can question him?

The Master: Well, I want it.

Mr. O'Brien: There may be some things that he is giving you that might be brought out on a question, but I object to the witness being permitted a latitude that was not given to the defendants' witnesses. I recall when Mr. Edgerton, who, by reason of his years at least, ought to be given some latitude, as soon as he started on a sentence, he was stopped. I object and take an exception.

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The Master: I don't want you to argue.

Mr. O'Brien: I assume that this conversation is over my objection, and you may proceed?

The Master: Well, having counsel's permission to proceed, Mr. Doane, will you explain to me, if you can, why it was that in the days when coal was comparatively cheap coke could be sold extensively in competition with coal?

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The Witness: Coke has been sold in New York ever since gas coal was manufactured, and that followed the manufacture of gas from rosin before we were able to get gas coal, and it had to be brought from England. Coal gas was manufactured from rosin, and anthracite coal at that time was not sold in the market here. Then when they went into the manufacture of coal gas they began to get coal in sufficient quantities in this country to meet their requirements, and they introduced the manufacture of coal gas. That

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must have occurred along about 1840 or 1850. From that time down to the time you speak of coke had been constantly sold in the New York market.

People were familiar with it, everybody knew what it was. It was used for all kinds of purposes, because there was not the same large quantity of coal coming into New York that there is in latter days. I think that that familiarity with the use of coke made it easier to sell coke than it is at the present day, because people have

42389 gotten away from the use of coke today, and when you go to sell coke to people today you have got to make them acquainted with a new fuel, although as a matter of fact, it is one of the oldest fuels that has ever been used in New York.

Mr. Ransom: Just on that point, I might remind you that on the proof in this case the rate for gas at the time you refer to was $2, and $1.75, and, of course, the gas companies were in a little better situation at that time with respect to coke in their coal gas plants then they are now.

The Master: I suppose it did make a difference in that respect, the price at which gas was being sold at that time.

42390 Mr. O'Brien: At that time Ransom's father was burning wood. What is the use of getting on the record what Ransom says about the price of gas.

Mr. Ransom: At that time your father was burning peat.

The Master: Was the price of gas at that time higher than today?

The Witness: The ruling price for 20 years was $3.50.

The Master: Did that at any time affect the

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price at which the gas companies could sell the coke?

The Witness: Naturally.

The Master: Naturally they could sell coke cheaper?

The Witness: Yes, naturally they could sell it cheaper.

The Master: Who is going to cross-examine?

Mr. Chambers: I think as to this witness one of us will cross-examine

Mr. O'Brien: I will ask that the matter be suspended until we get the books of the National Coal & Coke Company here.

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The Master: No, go on and cross-examine.

Mr. O'Brien: Can't I ask for the books of the National Coal & Coke Company to be brought here?

The Master: You can go on and cross-examine if you want to.

Mr. O'Brien: Well, I make a formal request that counsel produce the books of the National Coal & Coke Company for my cross-examination of the witness.

The Master: Do you want to cross-examine?

Mr. O'Brien: I certainly do.

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The Master: Proceed.

Mr. O'Brien: I note an exception to your Honor's refusal to compel the complainant to produce the books of the National Coal & Coke Company for the examination of the witness by me.

The Master: Yes, go ahead.

Mr. O'Brien: I want to correct the statement made here by Mr. Ransom and Mr. Vilas as to the testimony of Mr. Little on the question of coke.

42304 George W. Doane, Cross.

The Master: We will get into that later on. We will analyze that testimony. The record speaks for itself.

Mr. O'Brien: So we won't have a misunderstanding.

The Master: I will look at that.

Cross-examination by Mr. O'Brien:

Q. Did you say you were an officer of the Central Union also? A. No.

Q. The Northern Union and the East River?

A. The Northern Union, East River, and New
42305 Amsterdam.

Q. Are you president of any of those companies?

A. I am president of the New Amsterdam and Northern Union, and the National Coke & Coal, and vice president of the East River, of Long Island City.

Q. So that you are acquainted with the use of coke for the making of gas?

A. Yes, to a moderate degree.

Q. Why don't you use more coke than you do in the making of water gas?

Mr. Ransom: I object to that as not cross-examination.

The Master: I will allow it. It bears upon
42306 the disposition of coke.

A. You are asking me an engineering question.

Q. No, I am asking you a question on which you have testified here today. You testified here as to the uses of coke.

A. Yes.

Mr. Ransom: I object to the statement. He testified as to the sale of coke.

Q. The witness can say whether he can answer it or not. I have asked a business question of a business man.

A. The reason that I have always understood why coke is not used in larger quantity is an economical one. It was cheaper, it was to the advantage of the companies to sell coke at the price we have been able to get rather than to use it in their plants.

Q. In the face of the high price of anthracite coal, I repeat it now, why didn't you use more coke than you have used?

A. That is my answer.

Q. Then your answer is that you understand it is for reasons of economy?

A. Reasons of economy. 42398

Q. You have not given us the quantity of coke you did use in these plants of which you are the head?

A. No.

Q. Do you know how much coke you used last year?

A. No.

Q. Can you give it approximately?

A. No.

Q. Are you acquainted with how much coke is used in the making of gas at Astoria?

A. No.

Q. Can you say why at Astoria they have not used more coke in the face of the high price of anthracite 42399 coal than they have used?

Mr. Ransom: I object to that as not cross-examination.

The Master: I will allow it.

Mr. Ransom: Exception.

A. For the reason that I gave before, that it is cheaper to sell it than it is to use it.

Q. How much money did you spend last year in the National Coal & Coke Company for the promotion of new business?

A. I can't tell you that.

Q. In 1918, if you can approximate it, how much?

A. I can't tell you.

Q. Have you any data with you that would refresh your memory?

A. No.

Q. Did you spend $5,000?

A. Much more than that.

Q. Last year?

A. No, not last year. Last year they were not selling coke.

Q. You did not sell any last year?

42401 A. Practically none.

Q. You haven't sold any coke since this case has been on trial?

A. Yes, we have sold coke during 1919, but during 1918, we sold no coke.

The Master: You started to sell it when this case began.

The Witness: We began early in 1919.

Q. Will you tell me where at any time during the year 1917 or 1919, you placed any advertising for coke?

A. Well, several young women who do practically nothing else—

42402 Q. I am talking about advertising, not promotion, advertising.

A. We put no advertising in the newspapers or in the street cars or on billboards, have not done so for several years.

Q. Where in 1916 or 1915, did you ever advertise either in the street cars or on billboards or newspapers your coke?

A. I don't think we did it in either of those years.

Q. Will you name any hotels in New York City where in the past five years there has been a soliciting of business for coke by anybody in your employ?

42403

A. I could give you a long list from the salesmen, but I can't give it to you from my recollection.

Q. You never have solicited Mr. Muschenheim or the Astor Hotel?

A. Probably not.

Q. Have you ever solicited Mr. Regan of the Knickerbocker

A. Probably not.

Q. Or Mr. Bowman, with his number of hotels?

A. No. We know they would fire them out if they went there.

Q. Then you think they have not been approached? 42404

A. No, I am quite sure they have not.

Q. Will you state what efforts, if any, through circulars or personal canvassing or in any other way has been made to sell coke in Long Island City?

A. We have advertised in Long Island City, in the Long Island "Star." The Astoria plant is located in Long Island City. It would be a comparatively easy matter, it would be more economical, if there was a market nearby to deliver directly from the yards than it would be to take it over to New York in boats and transport it about New York; but from your Brooklyn yard—we bought a piece of real estate in Greenpoint and established there yards for 42405 the purpose of selling coke in that section of the city, and we spent—it took us four or five years of constant effort through the medium of salesmen and canvassers, as I have described, operating in Long Island City and in Greenpoint and Williamsburg, to get to a point where we sold 150 loads a day.

Q. You are dealing now with what period?

A. I am dealing with the period up to four years ago, three years ago. We closed down the Brooklyn yard three years ago and have not opened it since.

42406 Q. Will you tell me how many canvassers you have had in your employ in the years 1917, 1918 and 1919?

A. Well, we sold no coke in 1918, so we had none out then. 1915 was the year in which we were last actively engaged. In those years we had on an average five or six canvassers and salesmen working all the time.

Q. Are we to assume that the fundamental, the rock bottom reason for your not promoting the sale of coke is that you think it will interfere with the sale of gas for heating purposes?

42407 A. Not for one minute.

Q. Would you change your judgment on that if I told you that Alten S. Miller, the complainant's expert, testified to that?

A. Well, if Mr. Miller did, he testified to something that is entirely foreign to my training in the gas business.

Mr. Ransom: Mr. Miller has not testified to any such thing in this case.

Mr. O'Brien: I didn't say he testified to that in this case.

The Master: Yes, you did.

Mr. O'Brien: No, I did not.

42408 The Master: You left the impression that Mr. Miller had so testified in this case.

Mr. O'Brien: If I did, I did not intend to.

The Master: No such testimony was given in this case.

Mr. O'Brien: I will use the expression used by Mr. Miller, who worked for this company, and worked under Mr. Doane.

The Master: No, I don't want another speech. Ask another question.

Mr. Ransom: Mr. Miller never testified to any such thing for this company, in this or any other case.

Mr. O'Brien: The witness has so testified this morning. I will come to that in a minute.

The Witness: That would be a very narrow viewpoint—

Q. Just a minute, Mr. Doane. I will call your attention to your own testimony. Didn't you testify here this morning that one of the reasons why you could not sell coke for domestic purposes was that with the modern types of tenements and larger apartments their heating arrangements were such that with the use of gas they would not buy coke?

A. No, I didn't say anything of that kind. 42410

The Master: He didn't say that, he said cooking arrangements.

Mr. O'Brien: Well, I will have to depend upon the record.

Q. If you did say it you correct it now?

The Master: You need not answer that question. He did not say it.

A. I didn't say that.

Q. Will you say it at any time?

A. No, they don't use gas for heating apartment houses.

Q. I think you used the expression with regard to Long Island City.

A. Those are supplied with electricity for light and power, and that left the market for the sale of coke there only for the purpose of heating apartment houses, heating factories. 42411

Q. Has the development of the electric business for heat and power invaded a field that formerly might be covered by coke?

A. Very largely, very largely.

Q. And the more that they have developed intensively the use—

A. It has made it more difficult to sell coke.

Q. It has made it more difficult to sell coke?

A. It has.

Q. And has the sale of coke fallen off proportionately with the development and the increase of the sale of electricity?

A. We have lost very large users, and have had to seek outlets in other directions for our coke. In 1915 we made the largest sales we had ever made in one year, but it was made to an entirely different class of customers than we had had ten years previously. The Pelham Elevator Company, one of our
42413 largest users, they paid us several thousand dollars a month for coke, used for hoisting the elevators on buildings in course of construction, those people don't buy a pound of coke now, they use electric current for doing that.

Q. Would you say that that has taken away 50 per cent of your business?

A. I would not say that, it made it necessary for us to get additional business to take its place. I would not say as much as 50 per cent.

Q. 40 per cent, would you say?

A. Perhaps 25 to 40 per cent.

Q. Why haven't you gone out of business in the
42414 last three years? You practically shut down your activities?

A. Because we believed at any time that the manufacture of coal gas would be resumed in a larger quantity, and it was necessary to maintain an organization and be ready to sell coke.

Q. Are you contemplating in any of your gas companies a return to the coal gas system?

Mr. Ransom: I object to that, there is nothing about return to a coal gas system. If they get more coal they can make more coal gas.

A. I believe they will.

Q. Soon?

A. I won't say soon.

Q. Isn't it inevitable, Mr. Doane, under the present outlook?

A. I should think so.

Q. Now, if the price of coal goes up will not the market for coke necessarily increase?

A. It will.

Q. Outside of the moisture that may get into the paper bags—

A. It is the selling price of coal which controls the selling price of coke. 42416

The Master: And the ability to sell it.

The Witness: And our ability to sell it, and the necessity for selling it.

Q. Outside of the clumsiness of transportation, do you know of any inherent reasons in coke why it would not be used in place of anthracite coal where it is a little cheaper?

A. If it is made sufficiently cheaper, people will put up with the inconvenience of using coke. Coke is a more inconvenient fuel to use than coal, there is no use denying that.

Q. In volume it is about twice as much?

A. In volume it is about twice as much. One of the constant arguments of the coal dealers in competition with us to prevent the sale of coke to the contemplated users of coke is that it will burn out their grate bars and furnaces. 42417

Q. If it is not watched.

A. If it is not watched. They don't say if it is not watched, but they say it will do that. Now, we have got to go to the consumer and make him familiar with the necessity of regulating the drafts, and that he cannot use coke in the same manner in which coal is used.

Q. Are you acquainted with the so-called cold water tenements in this city, in the Boroughs of Manhattan and the Bronx?

A. Yes.

Q. How many are there, do you think?

A. I would not hazard to say that.

The Master: Still a great number.

The Witness: Yes, a great many.

Q. When you speak about "we did this and we did that": in regard to the marketing of coke, I take it you refer to some period prior to 1915?

42419 A. Yes, I had in mind our experience going back to 1901.

Q. You had few canvassers working for the last year, if any?

A. Well, during 1919 we had three or four; we have three or four out now.

Q. Three or four?

A. Yes.

Q. What territory do they cover?

A. They cover all the territory that can be reached from 14th Street, 21st Street and 110th Street. You must bear in mind that in offering coke for sale we have got to be within economical carting distance of

42420 our depots.

Q. Where are your depots?

A. 110th Street and the East River, 21st Street and the East River, 14th Street and the East River.

Q. You have none on the west side?

A. We had 41st Street, but we have not operated that this winter.

Q. You haven't any in Harlem?

A. 110th Street.

Q. I mean above that?

A. We have none in the Bronx.

Q. You haven't any above 110th Street?

A. No, we haven't any above 110th Street. From 110th Street we reach up to the Harlem River and on the upper west side.

Q. None below 14th Street on the west side?

A. None below 14th Street on the west side.

Q. So that in all that territory south of 14th Street, where there are a lot of old tenements, there is no depot?

A. No effort made to sell coke there.

Q. No effort made at all?

A. None made to sell there.

Q. Have you ever made any attempt at all to sell 42422
coke on Staten Island?

A. We have had for many years regular customers on Staten Island.

Q. At what time?

A. Down to 1915.

Q. For domestic uses or industrial uses?

A. Industrial purposes. It would not be practical for us to sell on Staten Island for domestic uses because of the long cartage, involving going over on a long ferry, and it would be necessary to take the coke in large quantities, as much as five or six or seven-ton trucks, so as to reduce the cost of cartage.

Q. Why do you eliminate the practicability of tak- 42423
ing it down on lighters?

A. Domestic users would not use it. Taking it on lighters would involve the establishment of a depot down there.

Q. That is what I mean.

A. We never felt there was trade enough to justify our doing that. You have got to consider that from an economical standpoint, as to whether you can get business enough to justify establishing a depot.

Q. What was the largest amount that your company ever paid for the promotion of business in any year?

A. I can't tell you.

Q. When did you ever advertise in a daily paper that is much read in the City of New York?

A. Well, if we ever could have sold coke there—

Q. Answer that, Mr. Deane, just say, if you can.

A. I don't remember.

Q. Did you ever advertise in the last twelve or fifteen years in a daily paper much read by the people?

A. Yes.

Q. Outside of the Long Island "Star"?

A. Yes.

42425 Q. What papers?

A. I can't tell you.

Q. Not one?

A. I can't tell you.

Q. How much did you spend annually in any year on such advertising, if you remember? A. Very little.

Q. Would a couple of hundred dollars cover it?

A. Oh, more than that.

Q. Five hundred?

A. I don't think that would cover it.

Q. Well, you could compile a few figures from your books covering this, couldn't you?

42426 The Master: Oh, yes, we could compile all sorts of figures from books, but we are through. I won't have it.

Mr. O'Brien: Who is through?

The Master: Compiling figures, we won't have any more figures.

Mr. O'Brien: I submit at this point in view of what you are just saying, that if they want to show what efforts they made in a businesslike way to find new business, to develop new markets they would come in here and tell you how much they spent.

Mr. Ransom: Then you would claim we should not have spent it, that we spent too much.

Q. When did you ever advertise in the street cars, what year did you ever advertise in street cars the sale of coke?

A. Twelve or fifteen years ago.

Q. Was that during the trial of the former suit in this rate case?

A. No.

Q. Before or after?

A. I am not sure about that; it must have been before.

42428

Q. Have you advertised in any street cars the sale of coke since the decision was rendered in the former case by the United States Supreme Court?

A. No.

Q. Have you ever made any attempt to reach any industrial concerns in the Borough of Manhattan or the Bronx, Brooklyn or Queens, in the last five years, in the matter of the sale of coke?

A. Yes.

Q. Will you name any half dozen concerns that you have endeavored to enlist among your consumers of coke?

A. There has not been an industrial concern in Manhattan reachable to our branches that we have not approached. 42429

Q. Who approached them?

A. Our salesmen and canvassers.

Q. Have you got any letters received from any big concern, industrial concern, to illustrate where they had declined to take your coke?

Mr. Ransom: I object to that.

The Master: I will allow it.

A. I couldn't say about that; I know there have been a great many of them.

4,24,30 George W. Deane, Cross.

Q. You mean that some one has solicited them?

A. Our salesmen and canvassers.

Q. How many salesmen did you have in 1916?

The Master: The question is not allowed. It has already been answered.

Mr. O'Brien: Exception.

Q. How many in 1915?

The Master: Already answered.

A. In 1915 we had four or five or six.

Q. How many in 1914?

Mr. Ransom: Objected to.

4,24,31 The Master: I won't allow it, it has gone far enough.

Mr. O'Brien: Exception.

The Master: I am not going to spend an hour going through all these years asking him how many men they had, how old they were, whether they were married or not, how many children they had, and where they live. It gets to a point of ridiculousness.

Mr. O'Brien: I except to your Honor's comment.

The Master: The exception is noted.

Mr. O'Brien: I think it is very unfair.

4,24,32 The Master: Well, I don't, or I would not have made it.

Mr. O'Brien: Well, those who go over this record will determine that.

The Master: They have the power.

Mr. O'Brien: They will read the questions and answers and they will determine whether that comment is fair, and I except to it.

The Master: They can't very well get the attitude of cross-examining counsel unless they sit here and see it.

Q. Now, you say you met with little success in the matter of trying to sell coke to large apartments. Will you tell me when there was any businesslike effort made, any campaign arranged, for the sale of coke to large apartments?

A. That has been done ever since we have been in business.

Q. Can you tell me any owners of large apartments that were approached by your salesmen with the idea of enlisting them among your customers?

A. My staff could give you the names of hundreds and thousands of them; I can't recall them. 42434

Q. They have such lists?

A. Yes.

Q. Did it occur to you—

A. We keep a card index of every consumer that we sell coke to, and every likely prospect for the sale of coke.

Q. Will you tell me over what period this effort was made to sell coke to large apartments?

A. Since we have been in business.

Q. You said something about $4 as your estimate of the cost of handling coke from the retort to the final consumer. On what is that based, how is that computation made up?

A. I said that Mr. Little had testified to that effect. 42435

Q. Where did he testify, who told you that he testified to that?

A. I read his testimony.

Q. At what page?

A. I don't recall the page, but I have his testimony on my desk at the office, and I made that note. He testified positively to $4 as the price which he thought was a fair differential.

Q. Did anybody ever call your attention to his

exhibit on the question of chamber ovens? Here is his testimony in regard to chamber ovens. Will you tell me there where he says anything about $4?

A. I don't know anything about that.

The Master: Cut the coke oven exhibits.

The Witness: I know he has testified to that.

Q. Did you make any computations yourself?

A. Yes.

Q. How is the $4 made up?

A. It is made up of the cost of transportation—

Q. You mean from Astoria?

42437 A. From Astoria.

Q. How much for that?

A. The margin of delivery to cover cost of cartage, etc., which the United States Fuel Administrator fixed at $2.60—our experience has been that that is just about the figure that should be used to cover the expense incidental to the cartage and delivery of coke.

Q. You mean a wartime figure, Mr. Doane?

A. No, I am giving you the figures which are in vogue at the present time.

Mr. Ransom: It is higher now, of course.

The Witness: It is higher now. Coal is sell-

42438 ing higher now and there is a larger differential now. The retail coal dealers have added 75 cents to the selling price of coal on the first of January in order to cover the increased cost of labor.

Q. Will you give me just so I can hurry along, the several items that make up this $4?

A. Well, there is $2.60 for the cost of delivery—

Q. How do you make that up, the $2.60?

A. Well, there are all the items incidental—

Q. Give me the items?

A. I cannot.

Q. How much for handling it from the retort house to the lighter?

The Master: Let me see that coke oven exhibit of Mr. Little.

A. I can't give accurate figures on that.

Q. You haven't gone into that in detail and figured it out?

A. No. I know that approximately it costs about so much to bring the coke from the retort to New York City.

Q. You don't mean to say that it cost you $4, or a substantial part of $4, to deliver to your consumers?

A. It takes $2.60, that is what the Fuel Administrator allows here in New York City to the retail 42440
dealers per ton for making their deliveries. That is a pretty fair figure.

Q. Have you figured out your cost to bring it across the river from Astoria to 111th Street?

A. Our cost at the present time for cartage alone, operating under economical conditions, where we occupy the real estate plant of the Consolidated Gas Company at a fair rental, is $2.10.

Q. A ton?

A. $2.10 a ton.

Q. Just across the river?

A. No, not to cross the river, not the coke after it has been brought over here from across the river 42441
and put into the pockets, after it is put into the carts to take it to the consumer and deliver it to the consumer, and to maintain the equipment necessary to do that.

Q. How much business did you do in the eight months of 1919?

A. Well we are selling now about 200 loads a day, 250 loads a day. That is the present cost. Of course, while the snow is on the street that figure has gone away up in the air, but I mean before the snow came.

42447 George W. Deane, Cross.

Q. $2.10 from your yard up there at 11th Street to the consumer?

A. Yes, sir.

Q. Most of your consumers in that neighborhood up-town are right around in that neighborhood, there isn't a long haul?

A. Oh, yes, we go up on the upper west side.

Q. Where on the upper west side do you sell any coke?

A. We are selling it there every day.

Q. How much does it cost to bring coke from Astoria across the river to your yard?

42448 A. I can't tell you that; that is a cost that I am not familiar with.

Q. You would not say it was $1.80 a ton, would you?

A. Oh, no.

Q. Where do you figure out $4 from the retort house to the consumer?

A. To sell coke in large quantities, such as Mr. Little has testified to, 700,000 tons a year, would involve the necessity of building plants at various points along the river here so as to reach the whole of Manhattan Island and the Bronx. That would involve

42449 a large capital investment representing many millions of dollars, and that $4 would represent an earning and a return on that investment.

Q. And that is what you mean when you speak about $4?

A. I mean we would have to have $4 in order to pay for the cost of handling that coke.

Q. You don't mean then that it cost $4 as of sometime in 1910, up to August 31st?

A. No.

Q. To deliver coke from the retort house in Astoria to some consumers?

42445

A. No, I had no such idea.

Q. Can't you give us roughly the figures, the cost of transporting it from the retort house in Astoria over to your yards at 111th Street?

A. Perhaps 50 cents would cover it.

Q. Would you say it cost nearly 50 cents?

A. I should think so.

Q. As of the period I have mentioned?

A. I think so, maybe more than that, if you take into consideration the breakage of the coke.

Q. About what percentage of the business done, speaking about labor now, of the National Coal & 42446
Coke Company, consists in carting other kinds of material for the affiliated companies of the Consolidated Gas Company?

A. Whenever we have horses that are idle in the stable—and you, of course, must realize that the orders for coke are not constant, some days we have more orders than we can deliver, and other days we have orders that will not keep our whole equipment busy, and we do carting for the Consolidated Gas Company, and for the other companies, whenever our horses are available, and they pay us the established prices for carting, so much per day for the use of the horse and wagon.

42447

Q. Can you tell me in brief terms about how much of your labor is spent, speaking in terms of dollars, annually, in doing carting for the Consolidated Gas Company or its affiliated companies?

A. If I should make a guess I should say that our bills to the Consolidated Gas Company for cartage would average from $2,000 to perhaps $3,000 a month.

Q. Then about 75 per cent of your labor is used in doing that for the affiliated companies?

A. No, nowheres near that amount. We don't

use any labor except perhaps a driver, and we don't always furnish a driver, sometimes they furnish the driver.

Q. What was your labor bill for last year, say 1918 and 1919?

A. I can't tell you that offhand.

Q. Well, you were not selling any coke in 1918?

A. But we had drivers to drive our horses.

Q. Then all your labor was used in doing work for the affiliated companies in 1918, wasn't it?

A. Yes, in 1918 it was.

42449 Q. Now, in 1919 you didn't sell much coke. What was your labor expense for all purposes in 1918?

The Master: How is that cross-examination?

Mr. O'Brien: Your Honor, it is quite clear, so far as we have gone, that there has not been any effort made to sell coke, it is an adjunct, another pocket for the moneys of the Consolidated Gas Company.

The Master: How does this inquiry of yours now bear upon any testimony given by this witness in his direct-examination?

Mr. Ransom: I made the objection before, but your Honor—

42450 Mr. O'Brien: His whole examination was taken up in an effort to tell the Court what they had done in trying to get a market for coke.

The Master: What difference does it make how much labor or time or work they do in carting for other companies in so far as that bears upon—

Mr. O'Brien: Taken in connection with the other things that the witness has testified to it leads to the conclusion that they are not making an earnest effort to find a market for coke. They are using the wagons, they are using the

horses, they are using the employees of the National Coal & Coke Company as a cartage department for the Consolidated Gas Company and its affiliated companies, and the selling of coke is the last thought that they have in their minds.

The Master: Next question.

Mr. O'Brien: That is the relation between the question I last asked and the problem we have before us.

The Master: Next question.

Mr. O'Brien: Then the question as I understand it remains unanswered? 42452

The Master: It was answered.

Q. Mr. Doane, you have said in regard to trying to enlist the services of coal dealers that one of the difficulties was that if they started to do business with you and sell your coke, when the stress came in the wholesale market they would have the antipathy of the wholesale coal dealers?

A. That is one of the reasons they have given to us.

The Master: We will take a recess until 2:15.

Mr. O'Brien: Did your Honor say until 2:30?

The Master: No, I said until 2:15, and if 42453
counsel is not here at 2:15 to cross-examine, I will excuse Mr. Doane.

Mr. O'Brien: Why do you say that?

The Master: Because you are always 15 minutes late, since you brought it on yourself.

Recess until 2:15 P. M.

42454 George W. Doane, Cross.

Afternoon session.

GEORGE W. DOANE resumed.

CROSS-EXAMINATION CONTINUED BY MR. O'BRIEN:

Q. Mr. Doane, I take it, and am I right in assuming from what you testified in reference to that $4, your estimate of the expense of handling the coke from the retorts to the consumers, that you have included there an item to cover interest on investment necessary to produce the coke?

42455 Mr. Ransom: Objected to as fully covered.

The Master: No, I am going to allow it.

Mr. Ransom: Exception.

A. When I testified to that, that is what I had in my mind, although Mr. Little in his testimony says that he allows $2 for selling expenses and $2 for the cost of cartage. But I had in mind in using the $4 a general figure that would reimburse me for the investment I would have to make in pockets and storage places and things of that kind.

By the Master:

Q. Do you agree with Mr. Little's version of it that it costs about $2 to cart and handle and $2 for

42456 selling expense?

A. It costs us about $2 for the cartage expense at present.

Mr. O'Brien: I do not assent to those figures, your Honor.

The Master: No, but I am asking Mr. Doane.

The Witness: It costs us $2 for cartage expense at the present time.

Q. What do you say about selling expenses?

A. My experience in New York would be that $2 would cover the selling expenses, together with the interest return on the investment in my pockets—pockets and storage yards.

By Mr. O'Brien:

Q. Where have you attempted in the Borough of Brooklyn to develop the coke market?

A. At the foot of Kent Avenue.

Q. You might cover this so I won't have to ask you many questions.

A. Yes.

Q. By telling us the mediums for exploiting the business that you have used, and the extent to which you have used them?

A. Well, on the Wallabout Canal we first leased and afterwards purchased 100-feet frontage, with the 42458
yards, and we put up discharging apparatus, etc. That was at the foot of Kent Avenue, and that is the medium, through Bedford Avenue, the outlet through which we got into Brooklyn.

Q. Was the attempt made through advertising in the Brooklyn papers?

A. Yes, there is where we did most of our billboard advertising, was in Brooklyn.

Q. And that was back in 1911 and 1912?

A. About that time.

Q. And not later?

A. Not later.

Q. Have you ever advertised in the Bronx at all? 42459

A. No, we never have sold any in the Bronx.

Q. Never made any attempt to reach the industries that are located along the water front in the Bronx?

A. No. The reason we did not do that was because the Central Union within the last two or three years have covered that market; we would have gone in there in competition with them, and it would have been pretty difficult and much more expensive to have gone in there and attempted to sell coke in competition with them.

42460 George W. Doane, Cross.

Q. To what extent has the introduction of gas for domestic uses, for heating and cooking, interfered with your sale of coke?

A. It has done so enormously, enormously.

Q. Then, Mr. Miller may not be far afield when he said you would have cut your own throats if you had conducted the exploitation of the coke business?

Mr. Ransom: Objected to as incompetent.

The Master: Do not answer that, Mr. Doane.

Mr. Ransom: Mr. Miller has testified there was no such thing, in this case.

42461 The Master: I do not care whether he did or not. I will not have this witness characterize anything that Mr. Miller said, favorable or otherwise.

Mr. Ransom: And it is incompetent.

Mr. O'Brien: Exception.

Q. Would you, Mr. Doane, where you are doing an extensive business in the sale of gas—I mean you, the Consolidated and its affiliated companies—for heating and cooking purposes, be cutting your own throats if you pushed the coke business?

A. That would be a narrow view of the situation, such as would never enter into my mind as a business

42462 man. I should expect to sell the commodity the public wanted, whether it was coke, gas or electricity.

The Master: And push all of them so far as you could?

The Witness: Push all of them as far as I could, and i would be a pretty poor business man if I worked on any other basis. That is a narrow view that I could not take. Perhaps if I was operating in a little town or a little village, such conditions might arise, but in a great city like New York City it is impossible to think of it

Q. Let me ask you this, now, as a fair man to man proposition: Taking for the purposes of our inquiry a decade, is the amount of money you have spent on canvassing and promotion a fair measure of the interest and the energy you have shown in the coke distributing business?

Mr. Ransom: Objected to as incompetent.

The Master: I am going to let Mr. Doane answer it.

A. I have put all the energy that I was capable of into this business. It has been an interesting business to me, the conditions under which I got into it 42464
have been interesting, and I have pushed it just as hard as any department I have been connected with.

Q. Will you just answer that question?

The Master: I shall rule that Mr. Doane has answered it. Ask another question.

Mr. O'Brien: I do not rule that way, your Honor.

The Master: I am not going to permit any more argument with this witness.

Mr. O'Brien: I have asked a very fair question.

The Master: I have ruled the question was answered. 42465

Q. My question was whether the amount of money that has been spent in the promotion of the coke business and spent in canvassing in the last decade—

The Master: Do not answer that question, Mr. Doane.

Q. (Continued.) Is a fair measure of the interest and the energy you have shown in the distribution of coke?

Mr. Ransom: Objected to on the ground previously stated.

The Master: The question is not allowed.

14155

42466 George W. Doane, Cross.

Mr. O'Brien: Your Honor, I cannot conceive how the question as to the measure of his interest and energy is answered by the answer he gave.

The Master: I am not going to allow the question.

Mr. O'Brien: It is an evasion of the question.

The Master: I am not going to allow the question.

Mr. O'Brien: Will your Honor say why?

The Master: No.

42467 Mr. O'Brien: I note an exception. It is a perfectly fair proposition, a fair question.

Q. Cast your memory over the last decade and tell me who, and to what extent—who made the effort, and to what extent it was made, to sell coke to industrial enterprises and institutions along the waterfront, north or south of New York?

A. All of our salesmen have been interested in that at one time or another.

Q. Have you ever sent to—

The Master: Let the witness answer your question.

42468 Mr. O'Brien: Do not get angry, Mr. Master. The witness will be given every opportunity; I am trying to get him to talk and he wants to talk but you won't let him.

The Master: Let the witness finish that answer. You started to say all of your salesmen—

The Witness: All of my salesmen and canvassers have visited all these points that you speak of, time and time again. They have got in touch with the local dealers and they have tried to reach large industrial concerns that were operating in these places, hoping to get an order which would take care of a barge load of coke at a time.

Q. Have you got a canvasser with you now, Mr. Doane, who has made visits to Bridgeport or Stamford?

A. Yes.

Q. Or New Haven or any towns in Connecticut?

A. Yes.

Q. And who has made that effort?

A. Yes.

Q. And when were those efforts made?

The Master: It is sufficiently covered. Not allowed. I will stop this.

Q. Are you talking about a period back of 1914? 42470

The Master: It is sufficiently covered; not allowed.

A. Up to 1915.

Mr. O'Brien: Exception.

The Master: He has answered it now.

Mr. O'Brien: Exception.

The Master: I do not know what you are excepting to. The witness has answered and I will let the answer stand.

Q. Will you name the canvassers who have done this work outside the city?

A. The name that comes to me first is Mr. Miller.

Q. Miller? 42471

A. Miller.

Q. Is he still in your employ?

A. No, he is not in our employ now, but he was in the employ of the Seaboard people until the 1st of February. He left our employ to enter the employ of the Seaboard people. He left their employ on the 1st of February.

Q. Do you recall any others?

A. The other men who are in our employ now, I doubt very much whether they have been to Bridgeport and those towns, because they have entered our em-

ploy in the last five years and these efforts were made prior to that. Mr. Miller is the only canvasser or salesman we have. I will say he is in our employ now, because I have on file his application for employment, and he has been with us for over a period of ten years at least. The other salesmen come and go from time to time. Although I think I have at least two other men that have been to those places, I would not want to state positively. I am quite sure they have.

Q. Did you ever set a price on your coke for any of these industrial institutions outside the city, whose

42473 custom you have sought?

A. The price of coke is always regulated by the price which the party we are approaching is paying for fuel, and the first thing we have to consider or to take into consideration is, What are they now paying for fuel and can we sell coke at a price which will enable us to get their order in competition with the price they are paying. So that it is not a question of putting a price of three, four, five, six, eight or ten dollars, the first question for me to determine is, How big a price can I get for my coke, and then the second question is, Can I quote a price that I can afford to accept the order from the consumer at? You

42474 must not lose sight of the idea that the selling price of anthracite coal or fuel governs the selling price of coke.

Q. As one goes up the other will go up?

A. Yes.

Q. As one comes down, the other—

A. The other will come down.

Q. What quantities of coke during the year 1919—we are dealing with a period of eight months here, by reason of the present manner in which the case has been presented—have you had on hand daily?

A. How much coke have we had on hand?

Q. Yes.

A. Well, we don't carry large quantities of coke in storage, because it is sent over from Astoria, where it is kept in barges, as we need it. But we do accumulate it; we always try to accumulate in the fall of the year a quantity such as will meet conditions such as occurred in New York in the last two or three weeks, and we have had several thousand tons of coke stored here in New York to meet that very emergency. But today that stock is nearly exhausted.

Q. Have not your efforts in the year 1919 been limited to the amount of coke that you had on hand? 42476

A. No, because, having been out of business for practically two or three years, we lost touch with our customers, and as we began selling coke it required a double effort to sell it, and considering the amount of coke which we have sold we have put into it three times as much effort as we would have had to put into it in normal times or conditions, because we had to get back the trade which we had lost because of the interruption during the two or three years in which there was a scarcity of coal.

Q. Is that an ordinary and unavoidable result of a cessation of your selling?

A. That is. That is an unavoidable result, because 42477
the consumer—you can readily see that the consumers who have been accustomed to using our coke, where we have summarily cut them off, have got to resort to other methods, or use other fuel. Perhaps they have changed their grate bars or draft or something else and have had to use other fuel. When we go back to them they will say, "We cannot depend on your fuel, we will not take it."

Q. That would mean if you stopped selling coke for a year and a half it would take at least a year and a half to get back that trade?

42478 George W. Doane, Cross.

A. It would be hard work to come back to that same state. I should say so. I should say you were right in that conclusion.

Q. Are the salaries of your canvassers regulated by the amount of business they produce?

A. No, we have two methods of compensation: One is a fixed salary, with a commission for the amount of business which they get, and the other for the more reliable men, the men that have been longer in our employ, there is a fixed and established salary. We have both ways of compensation, one based on a
42479 commission on the output, and the other based on a fixed compensation.

Q. That is two one way and one the other?

A. Yes.

Q. How much do you get for coke retail?

A. Now? Eight and a half.

Q. Well, I mean where you sell it in smaller quantities?

A. You mean where we sell it by the bag? We are getting 20 cents a bushel, which is $10 a ton. They come in the yard and get it; we fill their bushel bag and they take it away with them.

Q. And you do not have any expense of delivery?

42480 A. No expense of delivery, but we have the expense of handling, which is considerable now on account of the very great scarcity of labor.

Q. I had in mind the period of eight months in 1919. What were you getting then?

A. We were getting the same price then.

Q. You were getting the same price?

A. We were getting the same price; we were getting it then and we are getting it now.

Q. What effort have you ever made to sell coke to points in the south?

A. None.

Q. Newark?

A. No.

Q. Philadelphia?

A. No. Until very recently Newark has been a large manufacturer of coke themselves, and until very recently—

Q. Are there coke ovens over there?

A. No, but they had a coal gas plant and—

Q. And they sell it, too?

Mr. Ransom: Let him finish his answer once

The Master: Let him finish.

Q. And they sell it to companies outside? 42482

A. They sell it everywhere. I do not think they sell it to companies outside, because I think they have a market nearer home.

By the Master:

Q. You did not try to sell any coke down at Pittsburgh?

A. The Seaboard people did.

Q. Did you?

A. No, we did not.

Q. Or in Alabama, or Mississippi, or Tennessee?

A. No, nor San Francisco.

Q. Nor San Francisco, either?

A. No, sir. 42483

By Mr. O'Brien:

Q. Not Jeykl Island—you did not get any down there?

The Master: Come now, get along to something useful. You will be asking him whether he sent coke to London, Paris and Berlin.

Mr. O'Brien: I am going to object to the Master's comment on my examination of the witness.

The Master: I will not comment; I am going to cut it short very soon.

Mr. O'Brien: And making it appear humorous where it is a serious matter.

The Master: I do not think it is humorous.

Mr. O'Brien: I take the comment you make as indicating you have your mind made up on the subject.

The Master: I do not care what you think about it. I think a question asked this witness as to what effort he made to sell coke to people in the south and west is ridiculous—not alone humorous.

42485 Q. Do you know how much the Seaboard people have sold their coke for?

A. Yes.

Q. To the Bethlehem Steel Company?

A. The Bethlehem Steel Works, yes.

Q. How much?

A. About $8.50.

Q. If the price of anthracite reaches a prohibitive point, would it not be advisable to extend the coal gas industry?

Mr. Ransom: Objected to.

A. I should think it would.

Q. That is almost axiomatic?

42486 Mr. Ransom: Objected to.

A. I should think it would.

Q. That is almost axiomatic, is it not?

Q. If it were possible to get the coal.

Q. Yes.

A. One of the great difficulties in the last three or four years has been the difficulty of getting bituminous coal. I do not think in the last three or four years that our companies have been able to get more than 60 per cent of the coal that they needed.

Q. Well, you get a greater use out of your coal where you are working it through a coal gas plant,

don't you, where you can use the coke afterward for the making of gas?

A. Well, I am not sure about that, because the engineers differ in regard to that—

Q. Well, you would agree with—

Mr. Ransom: Let him finish his answer.

The Master: Yes, let him finish.

Mr. O'Brien: I do not know whether I will let him finish these answers without my breaking him off, or making objection, your Honor. I asked you here two or three days ago, when Mr. Ransom was examining my witness on the stand, 42488 to restrain him from breaking in on the answer, and I said if the answer was not complete he could move to strike it out. But you said no, he had a right to break in and that if he did not you would.

The Master: If you will only do that I will rule it.

Mr. O'Brien: I do not want the witness to wander; I want a responsive answer, and will regulate the answer by the question asked.

The Master: I rule that this answer is responsive and I want him to continue the answer. Read the question and answer.

(The last question and answer read by stenog- 42489 rapher.)

The Master: Now, continue, Mr. Doane.

The Witness: In mid-winter, when it is necessary to get the maximum capacity out of our apparatus, we cannot get that maximum capacity through the use of coke, we can get that maximum capacity through the use of coal, more than we can through the use of coke.

Mr. O'Brien: I object to his continuing.

The Master: You have called for an answer that is not yet complete. Go on, Mr. Doane.

The Witness: If you take that into consideration, together with the economical question as to whether you can sell your coke at a price which brings you a better return than there would be to use it in the water gas plants, you can see that there would come a period when it was not desirable to attempt to use the coke in the way that you suggest.

Q. If Mr. Addicks said in 1914 that they ought to extend the operations in the coal gas end of the gas-making business, you would quite agree with that as a

42491 general proposition?

Mr. Ransom: Objected to as incompetent.

The Master: The question is not allowed. I am not going to permit Mr. Doane to characterize statements made by other witnesses in or out of court, or at any other time.

Mr. Ransom: Or statements not made by other witnesses.

The Master: Or statements not made by them.

Mr. O'Brien: We have asked you to rule that way and you declined to so rule.

Mr. Chambers: You ruled the other way in Mr. Little's testimony, where he was asked if he did agree with Mr. Hine. You pressed the ques-

42492 tion that you asked then.

The Master: It was probably on some other theory.

Mr. Chambers: No, you asked if Mr. Hine said so and so would he agree with it, and he said so and so, and you pressed the question.

The Master: All right, I am making a different ruling now.

Mr. Chambers: I can give you the page; I am just reading it.

Mr. O'Brien: Your Honor does not seem to be interested in this question.

The Master: I do not know where you draw that inference from.

Mr. O'Brien: Why, you are champing at the bit.

The Master: I am champing at a lot of useless questions I think you ask.

Mr. O'Brien: Will your Honor give me an illustration of what you consider a useful question.

The Master: No, I will not: I am not here 42494
to teach you.

Mr. O'Brien: Exception.

Q. Do you use your own lighters to bring your coke over from Astoria?

A. The Astoria Company own the lighters. They are not strictly lighters, they are barges with hoisting apparatus on them, very much larger than any lighters. They carry four or five or six hundred tons.

Q. How are they propelled, by tugs?

A. They are brought over by tugs.

Q. Has the Astoria Company its own tugs?

A. Yes—I am not quite sure about that. I rather think not. 42495

Q. Do you sell any of the Central Union Company's coke?

A. No.

Q. Are there any coal gas plants in Bridgeport?

A. No, I think not. New Haven, but not Bridgeport.

Q. You spoke about selling or making an effort to sell to the brickmakers at Haverstraw?

A. Yes.

Q. That was back in 1910 or 1912, was it?

A. Somewhere along there, yes.

42406 George W. Doane, Cross.

Q. It was not in any recent years?

A. Not recent, no.

Q. Did you find the Seaboard Company a competitor?

A. Yes, an active competitor.

Q. And a dominant competitor?

A. Who?

Q. A dominant competitor?

A. No, not dominant. Not called dominant—in New York City.

Q. Have you sold any coke in the west part of
42407 Manhattan at all?

A. The western part of Manhattan?

Q. Yes.

The Master: The West Side.

A. Do you mean on the West Side?

Q. Yes.

A. Oh, yes. Until 1915 probably 25 per cent of our entire output was sold on the West Side.

Q. What was the reason that you stopped selling coke in 1918?

A. Scarcity of coal.

Q. Do you mean that you wanted to use all the coke you had in the gas making business?

42408 A. Our inability to get contract deliveries, both of bituminous coal and anthracite coal, and the fear of a shortage in the winter. We had to conserve every bit and every ounce of fuel that we had.

Q. Then we may assume from that that if there ever comes a stringency, or wherever a stringency comes in the coal market, coke becomes more valuable?

The Master: Objection sustained. The question is not allowed. It has been fully covered; it has been answered several times.

Mr. O'Brien: Not in that form, your Honor.

The Master: I won't take assumptions, anyhow. Call for facts.

Mr. O'Brien: Exception.

Q. When you spoke about the reasons that actuate the retail coal dealers in connection with the coke business, the fear of opposition from those who sell them coal, you had in mind, I suppose, the big wholesale dealers, the railroads?

Mr. Ransom: Objected to.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. I had in mind more particularly the individual 42500
operators and the medium through which the retail dealers reached the coal producers.

Q. The railroads?

A. Not necessarily the railroads, but perhaps railroads also.

Q. The railroad coal companies?

A. But the companies who are known as the middlemen.

Q. Well, don't you think that if you had a number of the active coal men in New York City selling your coke, through Mr. Brady's interests in the coal companies, and the interest of other trustees or directors of the Consolidated Gas Company in these coal com- 42501
panies, you could offset that?

Mr. Ransom: Objected to as a grossly improper question.

The Master: I am going to let the witness Doane answer it.

The Witness: Shall I answer it?

The Master: Yes, you can answer it your own way.

Mr. Ransom: Exception.

A. I cannot for a moment imagine that those gentlemen would interfere in any manner whatever with

42502

the detail operations of a company in that respect. During all these years that I have been with the company I have never known the directors to interfere from any selfish standpoint with the operations of the companies with which I was identified.

Q. I do not understand that, Mr. Doane. When you set out to get men to sell coal to, don't you think if you were in earnest you could get such protection as they needed?

Mr. Ransom: Objected to as incompetent.

A. Coke?

42503 Q. Yes, in New York City, coke.

A. Oh, I could protect the coal dealer? No, I cannot imagine that I can give them any protection.

Q. Have you ever in the last decade made any coal dealers a medium for selling coke?

The Master: The question is not allowed. It is fully covered.

Mr. O'Brien: I do not understand why your Honor should say it is fully covered.

The Master: Why, he has told you three different concerns that they sold through.

Mr. O'Brien: He did not mention any concern or coal company through whom they sold.

42504 The Master: I won't allow it.

Mr. O'Brien: He mentioned one Henry Murray, who was a stockholder or owner of a large interest in one of the older gas companies. Isn't that the Murray?

The Witness: No, he was not the owner of a dollar's worth of interest: I am sure of that.

Mr. O'Brien: Then you better read the record in this case.

Mr. Ransom: He evidently has.

The Master: I won't take any more of it.

Q. Do you mean Henry Murray on the West Side?

The Master: Do not answer that question; the question is not allowed.

Mr. O'Brien: Your Honor has assumed that these two or three men who were selling coke were coal dealers?

The Master: I do not care what they were; I will not allow the question.

Mr. O'Brien: You won't allow it anyway?

The Master: No.

Mr. O'Brien: I will take an exception. I am glad you put it that frankly.

Q. Outside of sending these few canvassers around, will you state briefly what efforts, if any, the National Coal & Coke Company have made in the last eight or nine years to educate the public in and around New York in the uses of and the advantages of using coke? 42506

Mr. Ransom: Objected to; it is fully covered.

The Master: The question is not allowed. The question has been exhaustively covered.

Mr. O'Brien: I made copious notes of the witness's testimony, your Honor, and I do not find anything but broad generalizations on that matter, indefinite as to time and indefinite as to methods.

The Master: I have ruled. 42507

Mr. O'Brien: Exception.

Q. Have you ever opened up a school where the uses could be taught?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have you ever sent anything through the streets that would enable the people to understand the advantages of coke?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have you made known to the owners and the dwellers of the tenements of New York City the fact that you had coke for sale?

The Master: It is not allowed.

Mr. O'Brien: Exception.

Q. Has there been any effort made in the last eight years, except through the sending of three or four canvassers around, to let the people in and around New York City know that they could buy coke from your company at a price named?

The Master: Same ruling. All of this subject-

42509 matter has been exhaustively covered.

Mr. O'Brien: Do you mean in the direct-examination?

The Master: No, in your cross.

Q. As I understand it, summing it up in a general way, Mr. Doane, when you spoke about the availability of coke for industrial purposes, you said it came in contact with or in competition with the lower-priced coals, buckwheat and rice?

The Master: The question is not allowed. You do not want to summarize the testimony.

Mr. O'Brien: I did not finish the question, your Honor.

42510 The Master: Then you better ask another one.

Mr. O'Brien: Do you mean that you won't allow the question to be finished?

The Master: No, ask another one.

Q. Are buckwheat and rice the only coals that coke comes in competition with when offered for industrial uses?

A. Not the only ones, but buckwheat and rice are more competitors than any other of the cheap fuels. There are mixtures with soft coal, there are all kinds of mixtures, sawdust and soft coal and the screenings

from the anthracite yards, and all kinds of fuel used for steam making purposes, that sells under six dollars.

Q. Did you ever buy any from the Seaboard yourself?

A. Yes, sir.

Q. What?

A. Yes.

Q. When?

A. Not the National Coal & Coke Company, the New Amsterdam Gas Company.

Q. When was that, during 1918? 42512

A. During 1919.

Q. What did you pay for it?

A. I would have to refer to my books, but I think it was somewhere within six or seven dollars.

Q. Has the National Coal & Coke Company bought coke from any other company but the Astoria?

A. No, not recently. They have in former years, but not recently.

Mr. O'Brien: That is all.

RE-DIRECT EXAMINATION BY MR. RANSOM:

Q. Mr. Doane, Mr. O'Brien has asked you whether you knew about the selling of quantities of coke by the Seaboard By-Products Company to one of the steel companies at Bethlehem, Pennsylvania. Do you know when or about when that was? 42513

A. That contract that they made with the Bethlehem Steel Company is about finished now. They are still carting coke.

Q. About when was it made?

A. It was made a few months ago.

Q. Do you know about how many tons of coke the Seaboard had on hand at the time that—

A. They told me they had 160,000 tons on hand.

42514

Mr. O'Brien: Who told you that?

Mr. Ransom: I object to the interruption

The Master: No, I will allow it.

The Witness: Their manager; their vice president and manager.

Mr. O'Brien: Mr.—

The Witness: Oh, what is his name?

Mr. O'Brien: Raumburg?

The Witness: Raumburg, or something like that.

The Master: Where do they have it, all over the meadows, that 160,000 tons?

42515

The Witness: What?

The Master: Do they spread it over the meadows, 160,000 tons?

The Witness: Oh, yes, everywhere. It is all over the meadows, where there was no foundation—dumped all over the salt meadows.

Q. Do you know any time that they had more than that on hand?

A. No, that was the maximum point. They had reached a point where they would have to shut down if they did not dispose of the coke.

Q. Then the coal shortage came on?

42516

A. Then the coal shortage came on, and they had this wonderful opportunity to ship it back to Pennsylvania, from whence the coal came originally.

Q. Are there any railroad facilities enabling the removal of coke from Astoria by rail?

A. There are none.

Q. Mr. O'Brien interrogated you as to the Astor and the Knickerbocker Hotels and the Bourman Hotel, and developed the fact there had been no recent solicitation of those hotels for the use of coke. Was that on account of the fact that they are now using gas?

A. They are using gas now; yes, sir.

Q. With modern appliances?

A. Yes.

Q. Mr. O'Brien asked you a question or two before recess with respect to the resumption of the making of larger quantities of coal gas in certain contingencies. Did you by your answer in that respect mean in any way to indicate a probability of the abandonment of the making of water gas?

A. What I had in mind was that it was very probable that conditions would arise which would make it desirable to operate the gas plant, the coal gas plant, 42518
to its capacity.

Q. That is, you could get the coal?

A. When we could get the coal. We have not been able in four years to get over sixty per cent of the coal that we desired or required.

Q. Under all of the conditions would you say, in the event that you were confronted with the necessity of disposing of half a million or more tons of coke in this New York market, and in the areas available to you here, that you could do that at a price very much more than $6.50 a ton?

Mr. O'Brien: I am going to object to that as too broad, too vague, too confusing, and not defi- 42519
nite as to time.

Mr. Ransom: I mean now.

The Master: I will allow it.

Mr. O'Brien: We are not dealing with now in this case.

The Master: I will allow it.

Mr. O'Brien: Exception.

The Master: What is your answer, Mr. Doane?

A. With conditions as they exist at the present time, it would be impossible to market such a quan-

42520 ity of coke except at a sacrifice of price that would leave a very small margin for the gas company for their coke.

Q. What price would you say; would you get more than $6.50?

A. I should say I would fix seven dollars as the very maximum that we could hope to get. I feel very strongly in my own mind that we never would be able to get that figure.

Q. Not much more than six dollars?

Mr. O'Brien: I object to that.

42521 The Master: It is not allowed.

Mr. O'Brien: You are always there with another flower on the tomb—"everybody except the relatives will now please pass out of the room." Mr. Ransom comes with two more questions, to repeat what he said before.

Mr. Ransom: That is all.

Mr. O'Brien: Talk about wasting time—here is a company wasting $14,000 a minute.

The Master: You are excused, Mr. Deane.

(Witness excused.)

42522 James H. Scarr, called as a witness in behalf of the complainant in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Ransom:

Q. Mr. Scarr, you are the meteorologist in charge of the Weather Bureau of the United States Department of Agriculture in the City of New York?

A. I am in charge of the office of the United States Weather Bureau, New York City.

Q. You have charge of the local office?

A. In New York City; yes, sir.

Q. And the observations are under your direction?

A. Yes.

Q. Have you produced here at my request for the twelve months of 1916, 1917, 1918 and 1919 what is known as the monthly meteorogical summaries with comparative data, of the Weather Bureau, these being the notations of observations at the local bureau?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial. I cannot see where this fits in.

The Master: What, the inquiry as to whether 42524
he has produced something?

Mr. O'Brien: No, we might as well approach the question.

The Master: No. I will take his answer whether he has produced some papers.

Q. You have produced these (handing witness)?

A. Yes.

Q. And these are such records?

A. They are.

By the Master:

Q. What are these, the official records or certified copies?

A. They are official records; they are not certified. 42525
I may certify them if you wish.

Q. I mean they are not those you keep in your office?

A. They are not the original records, but they are transcripts of the original record and summaries of that record made by me and under my direction, and issued; and I suppose I am called here to certify to them, as being correct.

Q. I was just wondering whether they are certified in any form?

A. No, they are not certified.

Q. They are the printed copies of your regular reports, are they?

A. Yes.

By Mr. Ransom:

Q. Made in pursuance of your departmental requirements?

A. Yes. I may add that you may have them certified over a seal of the Department of Agriculture at Washington. We cannot do that here.

Mr. Ransom: I offer them in evidence.

The Master: All of 1919?

42527-28 Mr. Ransom: I offer the first ten months of 1919.

The Master: And all of 1916, 1917 and 1918?

Mr. Ransom: Yes.

The Master: I will receive them.

Mr. Chambers: I want to look at them a minute, and object.

The Master: I have not heard any objection.

Mr. O'Brien: I expected to hear the Master say he would not take them.

The Master: Why? Haven't you put in a lot of tests as to gas, and then weather conditions, and all sorts of things? Why isn't this proper rebuttal?

42528

Mr. Chambers: We took the temperature, didn't we?

Mr. Ransom: No, they didn't even take the temperature in the room.

The Master: You do not want to keep Mr. Scarr here further, do you?

Mr. Ransom: No, I do not.

The Master: You do not want Mr. Scarr for anything, do you, Mr. Chambers?

Mr. Chambers: Well, wait; I want to see what he has here.

The Master: Didn't you ever see one of those things before?

Mr. Chambers: No, I did not see these very things.

By Mr. Chambers:

Q. Well, I would like to find out for one thing if you took these atmospheric pressure tests yourself?

A. You mean did I read the barometer?

Q. Yes.

A. No. 42530

Q. You did not read the barometer?

A. Not for the purpose of that record, no.

Q. Somebody else did?

A. Yes.

Q. Who was he, or was there a number of them?

A. A number of them—all he's, though.

Q. And after they read it, if they read it wrong, why it would be recorded wrong?

A. No.

Q. It would not?

A. It would be corrected before it was recorded, and then recorded correctly.

Q. Who would correct it? 42531

A. Some one charged with checking the observation and the work of the man who made the original observation. It might come to me for final arbitrament, but not often.

Q. All you know about these—these are printed records?

A. No, I know something more about them than the fact they are printed records. I know what they contain, and I know what they contain is correct.

Q. How do you know it if you did not read the instrument?

A. I know it, as I say, for the reason that men are charged with the duty of checking the readings of the man who made the original readings.

Q. That is, you rely on their ability and accuracy—have to?

A. Yes. Well, I do not have to, but I do.

Q. Who took the temperature?

A. Different men took the temperature, but the temperature is recorded the same as the pressure, automatically. The original record is still on file, and if any errors should appear they could—

42533 Q. Who checks the temperature? It changes during the day, does it not?

A. What is that?

Q. The temperature changes during the day?

A. Yes.

Q. It may be one thing in the forenoon and something else in the afternoon?

A. Yes.

Q. Who does that?

A. Whichever assistant is charged with that duty. There are fifteen men under me in the office.

Q. Who took the velocity of the wind?

A. That is also a matter of self-recording instruments, but it is translated from the recording instru-

42534 ment sheet into figures.

Q. Where was this taken—these records?

A. The wind velocity, you mean?

Q. Well, say the atmospheric pressure?

A. That was taken on the 29th floor—

Q. No, where?

The Master: He is telling you.

A. I am trying to tell you. The 29th floor of the Whitehall Building, at 17 Battery Place, Manhattan.

Q. Always?

A. Those were always, yes; but as they appear there, they are reduced to sea level, and not pressure at that particular elevation.

Q. Who reduces them to sea level?

A. The man who makes the observation. It is done twice daily, sometimes oftener.

Q. It is a matter of some figuring, is it not?

A. Yes.

Q. How does he figure it, by table?

A. Yes.

Q. Logarithmic table?

A. No. 42536

Q. What kind of a table?

A. Well, it is known as a reduction table, which gives the amount of correction to be applied to the reading of the instrument for different temperatures and different elevations.

Q. Who made up the formula for it that they used?

A. It was made in the office of the Weather Bureau in Washington and furnished to the various stations. I could not tell you who did it; I don't know.

By the Master:

Q. Mr. Scarr, these records that you have produced are the official governmental records kept under the supervision of the United States officials, of whom you are one and in charge of the New York office? 42537

A. Yes.

Q. They are the results of self-recording instruments provided by the Government?

A. Yes.

Q. And tested frequently?

A. Yes.

Q. The accuracy of your assistants tested frequently?

A. Yes.

42538 James H. Scarr, Direct.

Q. The assistants in your office have been there some time?

A. Yes.

The Master: I am not going to allow any further cross.

Mr. Chambers: Then we will object to them as being incompetent irrelevant and immaterial.

The Master: The objections are overruled.

Mr. Chambers: Exception.

Mr. O'Brien: I want to look at them myself, your Honor.

42539 The Master: You have had enough time to look at them. These papers are all received as one exhibit and we will give them one exhibit number.

Mr. Chambers: Just a minute, before you take them. I object to them as being incompetent, irrelevant and immaterial, not made by the witness, made by other people who are not called as witnesses for cross-examination, and made at a different place than the places in question—the places the tests were.

The Master: I do not think the Government provides facilities for Mr. Scarr to have a man up at Grand Street and the Bowery and 79th Street and Third Avenue twice a day.

42540 Mr. Chambers: But conditions are different in different parts of the City.

The Witness: What conditions?

The Master: Do not start a argument, Mr. Scarr. We have been here for nine months now trying to finish this case.

Mr. O'Brien: You will note my exception, your Honor.

Mr. Chambers: You rule that we cannot cross-

examine any further or examine any further at all?

The Master: That is what I said.

Mr. Chambers: Even after they are in?

The Master: That is what I said.

Mr. O'Brien: I object to the papers being received on the ground that, according to the testimony of the witness, the figures are based upon calculations that have not been verified, upon the use of formulae that have not been explained or proven, upon the personal equation, as it may exist, among fifteen or more or less female and 42542
male operators.

Mr. Ransom: He said all he's.

Mr. O'Brien: On the ground, further, that there are a number of matters on this paper that have not anything to do with this case.

The Master: I will disregard them.

Mr. O'Brien: Precipitation, various columns for that.

The Master: I will disregard all those things that do not relate to the case.

Mr. O'Brien: There are various columns relating to wind and various columns relating to sunshine and cloudiness. On the further ground 42543
that, so far as I can see—

Mr. Scarr, is the hour of the particular temperature given here, or is this the average of the day?

The Master: You can answer that.

The Witness: It depends on what you are asking about.

By Mr. O'Brien:

Q. Take the temperature for a given day, is that the average for the day?

A. The temperatures on the front of the form is

the highest temperature and the lowest temperature for the twenty-four hours of the calendar day, with the mean, and its departure from the normal. On the back of the form is the temperature at each hour of the twenty-four hours for each day of the month.

Q. It does not give the daily atmospheric pressure?

A. What do you mean by "daily"?

Q. It gives the average for the month, does it not?

A. That is all this form gives. That is, it gives the highest and the lowest and the average.

Q. During the month?

42545 A. Yes.

Mr. O'Brien: Before completing my objection, your Honor, I would like to ask one or two questions.

Mr. Chambers: Let me just ask another question.

By Mr. Chambers:

Q. That is to say, there is nothing on here which shows what the atmospheric pressure was on any given day?

A. Except on the days on which the highest and lowest occurred; I think that is given.

Q. Yes, possibly the highest and lowest.

42546 A. Yes.

Q. Those in between are not given?

A. They are not given.

Mr. O'Brien: Just two questions before I complete my objection, your Honor.

By Mr. O'Brien:

Q. How is a mean taken?

A. The mean is half the sum of the highest and the lowest for the day. You can get another mean on the back, if you care to, by adding the hourly temperatures together and dividing by twenty-four.

Q. Would that vary much?

A. Not much, only slightly.

Mr. Clark: The barometric pressure varies during the day, does it not?

The Witness: Always.

Q. The mean departure from the normal, what does that column contain?

A. The normal for each day is a smoothed out curve of the average temperature of that day for a period of thirty-three or more years, and then the mean for the day will either be above or below that normal, and the signs plus and minus indicate simply whether that would be a warm day or a cold day.

Q. Haven't you found as time wears on that things 42548
are getting more abnormal?

A. No.

Q. Speaking about the weather?

A. Not as far as the weather is concerned. Lawyers are getting that way, but not the weather.

Q. For instance, as to the variations within a given time in a given day, in New York, are there wider variations than there have been before?

A. No, there are not.

Q. That is a misconception?

A. That is a misconception, if any people have it. I do not know whether they have or not.

Q. Are there drops, more sudden than they were 42549
before?

A. No.

Mr. Chambers: May I ask Mr. Scarr if that snow storm is coming that was predicted for the next few days?

The Witness: I have been asked that question so many times.

Mr. O'Brien: I will object to that exhibit.

The Master: The objection is overruled. It will be marked.

Mr. Chambers: Exception.

42550

Mr. Clark: Will the Master state what relevancy this has?

The Master: It apparently bears on the protests.

Mr. Clark: How does it?

The Master: I do not know. It is intimated it does and I will take it. Mark one of those sheets as an exhibit.

Marked Complainant's Exhibit No. 478.

Mr. Chambers: I wish counsel would explain wherein these are material?

The Master: You would want an argument on it, I suppose.

42551

Mr. Ransom: I produce Mr. Terry for cross-examination.

Mr. Clark: I would prefer to wait until Mr. Birdsley has had a chance to look over all those tabulations.

The Master: Yes, just hold Mr. Terry back.

Mr. Clark: He has had a chance to go through some, but not all of them.

Mr. Ransom: I give notice now that you cannot expect to have very much longer, if you are going to do it during this rebuttal.

Mr. Clark: I do not know why we cannot have time.

42552

Mr. Ransom: What?

Mr. Clark: I do not know why we cannot have time.

Mr. Ransom: Because this rebuttal is not going to last very long.

Mr. Clark: It depends on what you put in.

(Witness excused.)

G. W. LEROY TRAVIS, called as a witness in behalf of complainant in rebuttal, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Travis, what position do you hold with the Consolidated Gas Company?

A. General superintendent, Department of Mains and Services.

Q. How long have you held that position?

A. Five years.

Q. How long have you been with the company and 42554
in its employ?

A. Nine years.

Q. Are you a graduate of any college?

A. I am.

Q. What college?

A. Lehigh University.

Q. You hold an engineering degree therefrom?

A. I do.

Q. Civil engineer?

A. Yes, sir.

Q. During the past five years—I think I might as well ask the leading question. Was Mr. Simpson, who is at the head of the Department of Mains and 42555
Services, absent from duty during part of the war period by reason of the fact that he was in France?

A. Yes, sir.

Q. During that time were you the acting head of that department?

A. Yes, sir.

Q. And at other times, outside of this war period of Mr. Simpson's absence, you were the assistant general superintendent?

A. Yes, sir.

Q. During the last five years?

A. Yes, sir.

42556 G. W. Leroy Travis, Direct.

Q. What were your duties in that capacity?

A. To supervise all the work on the mains and services in the streets of Manhattan, and also the work on the mains and services along the lines of the new subways.

Q. That is, you were personally and particularly in charge of the work on mains and services in connection with the subway construction in Manhattan?

A. Yes, sir.

Q. During the past five years?

A. Yes, sir.

42557 Q. What is done with gas mains during the construction of a rapid transit subway in any street in which there are mains located?

Mr. Chambers: I will have to object to that.

The Master: I think I will have to sustain that. Ask him what was in fact done.

Q. What was in fact done; what were the various ways in which—

The Master: Gas mains were actually handled and treated.

Mr. O'Brien: Objected to as not rebuttal.

Q. What did you actually do with Consolidated mains, or what was actually done with Consolidated
42558 mains in these streets in which subways were in the course of construction?

The Master: I shall rule that proper rebuttal, in the light of these questions asked by Judge Ransom about these subways being constructed. I assume it is to show that they had an effect on the tests, and I will take it on that theory, if that is your theory.

Mr. Ransom: It is.

The Master: I will take it.

Mr. Chambers: You mean the candle power tests?

The Master: Yes.

Mr. O'Brien: I think that is awfully problematical.

The Master: No, I think that had an effect on the tests.

Mr. O'Brien: This man has not been qualified here as an expert.

The Master: He is not asking for expert judgment. He is asking what in fact was done with the mains, as a basis, I suppose, for further testimony.

Mr. O'Brien: Is this the pretext for getting 42560
in other testimony?

The Master: I do not care. The objection is overruled.

Mr. Chambers: I object to it as incompetent, irrelevant, immaterial, and not proper rebuttal.

The Master: I rule that it is proper rebuttal, upon my understanding of the purpose of it.

A. The mains were laid along the curb on each side of the street.

Mr. O'Brien: What place are you talking about?

The Witness: Any place along the line of the subway—

42561

Mr. Ransom: Do not pay any attention to these interruptions. He is my witness.

The Witness: The pipe was laid in the gutter to replace the main in the street.

Q. That is the supply main?

A. The supply main, and the services to the houses were connected to this main along the gutter. Wherever a large main crossed the subway it was carried up overhead.

Q. That is what is called an overhead by-pass?

A. Overhead by-passes, yes.

42562 G. W. Leroy Travis, Direct.

Q. Just describe, will you, a little more in detail, what is meant by overhead by-passing?

A. The main is cut off at a safe distance back of the subway construction and a new pipe is laid from these two cuts into the sidewalk, and then up and over on a trestle, down on the other side, so that the gas is carried through the air in this pipe instead of under the deck.

Q. How high above the street were these by-passes usually placed?

A. About thirteen to fourteen feet of clearance.

42563 Q. Are they carried over intersecting streets?

A. Yes, sir.

Q. And the gas passes through these mains meanwhile?

A. Yes, sir.

Q. Are you familiar from personal knowledge, by reason of your duties, with all of the mains of the complainant company which were either laid along the curb, in the gutters, or by-passed overhead in the manner which you have described in connection with subway construction, during the last four or five years?

A. I am.

42564 Q. That is you were personally on the ground at each of these places?

A. Yes, sir.

Q. From time to time?

A. Yes, sir.

Q. And you had charge of all of these mains which were thus taken out of the ground in order to permit of subway construction?

A. Yes, sir.

Mr. O'Brien: To save a little time, I am going to make a number of objections unless they get a little definite.

The Master: They have got to get definite and show what street it was on and how it bears on this case.

Mr. Chambers: I object to it.

Q. I show you, Mr. Travis, certain photographs. Do they correctly show and indicate the way in which certain of the mains were by-passed or handled along the curbs during this period of subway construction (handing witness)?

Mr. Chambers: I object to it on the ground that it is indefinite and uncertain where. Where was the subway constructed that he refers to and 42566
what street was it on?

The Master: Overruled.

Mr. Chambers: Exception.

A. Yes.

Q. In fact, those photographs represent mains that are still exposed?

Mr. Chambers: I object on the ground he should let him say what they are.

The Master: I will let him state.

A. Not all of them, no, sir.

Q. Not all of these are?

A. Here is one that is not (indicating).

Q. Can you describe where the one which you have 42567
now referred to is?

A. That is at Broadway and 17th Street.

Q. That by-pass is no longer in existence?

A. No, sir.

Q. But that correctly shows the condition as it was at that time?

A. Yes, sir.

The Master: At what time?

Q. Do you recall?

A. Well, that was 1916, that was in.

Mr. Chambers: What time?

The Witness: During the year 1916, this was in existence, and I think part of 1917.

The Master: And what location is that?

The Witness: Broadway and 17th Street.

Q. Have you a memorandum which would refresh your recollection as to just what time that instance of overhead by-passing continued?

A. That was put in during 1913, and taken out during 1917.

Q. Could you specify the approximate time in 1917?

42569 A. During the summer of 1917.

Mr. Ransom: I offer the photographs in evidence.

The Master: I will reserve decision on that until you get some more photographs in. I want to see what territory they cover.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. Vilas: That better be identified, Judge Ransom.

The Master: No, we can identify it later. That is all right.

Q. I show you this photograph. Does that repre-
42570 sent an instance of overhead by-passing which was or is in existence, as to mains of the Consolidated Company (handing witness)?

A. Yes, sir.

Q. Can you tell where that one was, or is?

A. Third Avenue and 14th Street.

Q. Is that still in existence?

A. Yes, sir.

The Master: It is not 14th Street, is it?

The Witness: Yes.

The Master: The elevated station; I see.

Q. At the corner of 14th Street and Third Avenue, under the elevated structure?

A. Yes, sir.

Q. That by-pass is still in existence?

A. Yes, sir.

Q. Can you tell about when that main was treated in that way first?

A. March, 1917.

Q. And it has been that way ever since?

A. Yes, sir.

Q. And that correctly shows the situation at that point?

A. Yes, sir.

Q. Now, I show you this photograph (handing witness). Does that correctly show a condition which did exist or now exists, as to mains of the Consolidated Gas Company? 42572

A. Yes, sir, at Second Avenue and 14th Street.

Q. Is that by-pass still in existence?

A. Yes, sir.

Q. When was that done?

A. March, 1917.

Mr. Chambers: This, I take it, is all over my objection. I object to this. The Master overrules it?

The Master: Yes.

Mr. Chambers: Exception.

Mr. O'Brien: The same objection and exception. 42573

Q. I show you this photograph (handing witness). Does that correctly show a condition which did exist or which now exists with respect to mains of the Consolidated Gas Company?

A. Yes, sir.

Q. Where is that?

A. First Avenue and 14th Street.

Q. That is still in existence?

A. Yes, sir.

Q. Has been since when?

A. March, 1917.

The Master: All of these points are between the gas works of the Consolidated lowest downtown and Grand Street and the Bowery? In other words, the furthest downtown works that the Consolidated had during these years, from 1917 to 1920, were at 21st Street, East?

Mr. Ransom: 14th is on the north side of 14th Street.

The Witness: Yes, sir.

42575 By the Master:

Q. 14th Street is on the north side of 14th Street?

A. Yes, sir.

Q. East side?

A. It is the north side of 14th Street.

Q. The east side of town?

A. Yes, sir.

Q. East 14th Street?

A. Yes, sir.

By Mr. Ransom:

Q. And 21st Street is on the east side of town, the 21st Street plant?

A. Yes, sir.

42576 Q. Does this picture show a condition which had existed or which now exists, with respect to mains — several mains of the Consolidated Company (handing witness)?

A. Yes, sir.

Q. That picture is correct as of this date?

A. Yes, sir.

Q. Where is that?

A. Second Avenue and 14th Street.

Q. How long has that situation existed with respect to mains across 14th Street?

A. March, 1917.

By the Master:

Q. How far east do these mains run?

A. How far east? They run north and south.

Q. On all of the avenues they are north and south?

A. They are the Second Avenue mains, which are carried across 14th Street.

Q. Where do these mains come from; where do they get their gas?

A. Second Avenue.

Mr. Chambers: If he knows. I guess nobody knows.

Mr. Ransom: I will take Mr. Chambers' statement on that. 42578

The Witness: The 30-inch there comes from 21st Street. That is the largest one. There is an 18-inch comes from 21st Street.

Q. Take this other photograph here at First Avenue and 14th Street, what is that main there?

A. One of them replaces a 24-inch Standard main and one replaces a 16 or an 18-inch Consolidated main.

Q. Where does the Consolidated main come from?

A. 21st Street.

Q. How about this one on Second Avenue and 14th Street; what main is that?

A. This one here replaces the 24-inch Consolidated 42579
from 21st Street.

Q. And this one here at 14th Street and Third Avenue—well, there are several of them there. What are they?

A. There are two of them. One replaces the 16-inch Consolidated main from 21st Street and the other replaces the 12-inch Mutual.

Q. And this one down here at Broadway and 17th Street?

A. That replaces the 20-inch Consolidated.

Q. Where does that come from?

A. 14th Street.

Q. East 14th Street?

A. Yes.

By Mr. Ransom:

Q. I show you this picture (handing witness). Does this also show a condition which did exist or now exists with respect to mains of the Consolidated Company?

A. Yes.

The Master: Where is that?

Q. Or where was that? Is that still in existence?

42581 A. No, sir.

Q. That was where?

A. I think that is Broadway and 18th Street.

Q. 18th or 17th?

A. I don't think that is 17th.

The Master: It is marked Broadway at 17th Street.

Q. Well, you recognize that situation as one of the mains with which you had to deal, on Broadway?

A. Yes, it looks familiar.

Q. During what days was that by-passing in effect?

A. That is the same as this, a different picture (in-

42582 dicating).

Q. That is the same corner?

A. Yes, it is the same by-pass.

Mr. Chambers: Where and when?

The Witness: Broadway and 17th Street.

Mr. Chambers: When, he asked.

Mr. Ransom: He gave the date for that.

Mr. Chambers: When? I did not hear it.

Mr. Ransom: From 1913, to the summer of 1917.

Q. Does this picture show an instance of the way

in which mains were handled, along the curb, or gutter by-passes (handing witness)?

A. Yes, sir.

By the Master:

Q. This is 60th Street and Lexington Avenue?

A. Certainly.

Q. When was that?

A. 60th Street and Lexington Avenue, that was taken out last year.

Q. And that situation was restored about a year ago?

A. Yes, last year sometime. 42584

Q. Do you recognize that pipe; can you tell us where it comes from or what it is?

A. It comes down here, goes into the ground, and ties into the mains (illustrating).

Q. Comes from where?

A. Runs right through 60th Street, goes down Lexington Avenue and is tied into the mains in Lexington Avenue—some more mains, small mains.

Q. Just distributing mains?

A. Distributing mains. From that the by-pass services are taken.

By Mr. Ransom:

Q. Does this show a fairly typical instance of the so-called gutter by-pass (handing witness)? 42585

A. Yes, sir.

By the Master:

Q. Was not Lexington Avenue torn up there for a long time, with your pipes on the street, for several years?

A. Yes, sir.

Q. All the way up Lexington Avenue?

A. Yes, sir. This one here just shows it at 60th Street (indicating).

Q. 60th Street and Lexington Avenue?

A. Yes, sir.

Q. Well, that condition obtained all the way up Lexington Avenue, did it not, for quite a ways?

A. Yes, sir.

Mr. Ransom: I will come to that in a minute.

By Mr. Ransom:

Q. Mr. Travis, have you maps of the Borough of Manhattan upon which are indicated accurately, to your knowledge, the locations in which, during each of the years 1916 to 1919, both inclusive, the Consoli-
42587 dated mains were either by-passed overhead or by-passed in the gutters, in the manner which you have described?

A. I have.

Q. Will you produce such maps?

(Witness produces maps.)

Q. This first map correctly shows the by-passes in use during 1916?

A. Yes, sir, together with the overheads.

Q. That is, both the gutter and the overhead?

A. Yes, sir.

Q. And it is indicated on the map accurately which is which?

42588 A. Well, it is noted which is which.

Q. Where it is overhead it is noted?

A. Where it is overhead it is marked "overhead."

Q. Otherwise it is gutter?

A. It is gutter.

Q. And there is also indicated on the map the size of the Consolidated main that is so treated?

A. No, it is the size of the overhead.

Q. The size of the overhead?

A. Not necessarily the size of the main it replaces.

Q. Where is Grand Street?

A. There is Grand Street (indicating on map).

42589

Q. And there were many mains exposed, or exposures at various points in Canal Street?

A. Yes, sir, from Broadway to the Bowery.

Q. What size?

A. One of them was a 16-inch overhead and one was a 12-inch overhead.

Q. Continuously exposed?

A. The 16 was exposed from the Bowery to Broadway.

By the Master:

Q. How long?

A. For how many years?

42590

Q. All during 1916?

A. Yes, sir.

Mr. Ransom: And later also, that appears.

The Master: Yes. Well, we are just talking about 1916.

Mr. Ransom: Yes.

The Witness: And there was a 12-inch. The 12-inch went from Mulberry to Broadway. There was a 30-inch crossing here at Lafayette Street, a 16-inch overhead replacing a 30-inch main; and there was a 16-inch overhead crossing at the Bowery, spanning Canal Street.

By Mr. Ransom:

42591

Q. What was the situation in 1916, at 14th Street?

A. Gutter by-passes were laid during 1916, from the point as shown there (indicating).

Q. That is from Avenue B west to University Place?

A. Yes.

Q. Covering that part of the street?

A. Yes, sir.

Q. And there were various overhead by-passings on Broadway in the vicinity of Union Square?

A. Yes, sir.

Q. And on Lexington Avenue there were both overhead and gutter by-passes between 42nd Street and 53rd Street?

A. Yes, sir.

Q. And also gutter by-passes at 60th Street?

Mr. Chambers: I object. I should think the witness ought to be able to testify a little bit.

The Master: It cannot do any harm. I do not see any reason for spreading that all on the record.

42503 Mr. Ransom: I would just like to show some instances.

Q. And Seventh Avenue had both overhead and gutter by-passes throughout its length from 42nd Street down?

A. From 59th Street down.

Q. Well, from 59th Street down, and to your knowledge this map correctly shows the conditions at that time?

A. Yes, sir.

Mr. Ransom: I offer in evidence the 1916 map.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial. Who made it?

42504 Mr. Hahn: The same objection.

Mr. Chambers: I asked him who made the map.

The Witness: One of my assistants.

By Mr. Chambers:

Q. What is his name?

A. Mr. Aitken.

Q. Aitken?

A. Aitken.

Q. Where did he get his information from?

A. From the field books kept by the men out in the field.

Q. And he prepared the map from those field books?

A. Yes, sir.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: Well, do you know it is right?

The Witness: Yes, sir. I am positive—I say, I know it is right; I have not checked each one, but I have checked a number of them. I feel sure that it is right.

By Mr. Ransom:

Q. Well, these men in the field were under your direction? 42596

A. Yes, sir.

Q. You had charge of these inspectors?

A. Yes, sir.

By the Master:

Q. Well, as to some of these things that are still in existence you know it is right?

A. Yes, sir.

Mr. Ransom: And you have the field books?

Q. You have no doubt that Seventh Avenue, from 59th Street down, is right, have you, as shown there?

A. I think it is right as shown there, yes, sir.

By Mr. Ransom: 42597

Q. You were out day by day during 1916, and saw these?

A. I saw them.

The Master: I will take it.

Mr. Chambers: Same objection, not properly proved.

The Master: I will take it.

Mr. Chambers: Exception.

The map is received and marked Complainant's Exhibit No. 479.

42598 G. W. Leroy Travis, Direct.

Mr. Clark: I also object on the ground that it is irrelevant, it is not proved properly.

The Master: Standing by itself it does not prove anything. I could not draw any inferences from it.

Mr. Chambers: Not proper rebuttal.

Mr. Clark: Not proper rebuttal.

The Master: I will take it as introductory to some further proof, I suppose?

Mr. Ransom: Yes.

Q. Have you likewise a similar map showing by-
42599 passes in use during 1917?

A. Yes, sir.

Q. Is this likewise correct to your personal knowledge?

A. Yes, sir.

Mr. Ransom: I offer this in evidence.

Mr. Chambers: I make the same objection.

Mr. Clark: Objected to as incompetent, irrelevant and immaterial, and not proper rebuttal.

The Master: Objection overruled.

Mr. Clark: Exception.

Mr. Hahn: Same objection and same exception.

42600 The map is received and marked Complainant's Exhibit No. 480.

Mr. O'Brien: Is your Honor accepting these maps on the theory that other testimony may be offered that will connect them?

The Master: Yes. I cannot draw any inferences from them and will not, without further testimony.

Mr. O'Brien: It is all subject to being connected by the complainant?

The Master: Surely.

Q. Now, have you produced similarly a map for

1918 showing the by-passes in use during that year at the various points thereon indicated?

A. Yes, sir.

Q. Correct to your personal knowledge, from information gained in your daily work as you have hitherto described?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Clark: Same objection.

The Master: Same objections and ruling. Mark it.

Mr. Chambers: Same objection. 42602

The Master: Yes, it is noted.

The map is received and marked Complainant's Exhibit No. 481.

Q. Have you similarly produced, Mr. Travis, from the files of the company, a map showing the by-passes in use during 1919, and is that correct to your knowledge?

A. Yes, sir.

Q. And this shows some of the instances of overhead by-passings, for which photographs have previously been identified by you?

A. Yes, sir.

Q. And to your knowledge this correctly shows the 1919 conditions? 42603

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Exception.

The map is received and marked Complainant's Exhibit No. 482.

The Master: Now, do you want to renew your offer on those photographs?

Mr. Ransom: That is the next step. I now offer in evidence the six photographs previously identified by the witness.

The Master: Received, on the same objection.

Mr. Chambers: Same objection.

Mr. Clark: Same objection and exception.

The Master: Mark them as one exhibit. Clip them together in some way.

Six photographs received and marked Complainant's Exhibit No. 483.

Q. Have you had a situation, Mr. Travis, on Avenue D, in the vicinity of 14th Street, which is not exactly in the category of either of the two kinds of by-passing you have described; that is, is there a
42605 main exposed there in still a third way?

Mr. Chambers: Same objection.

The Master: Overruled.

Q. Or has been?

A. Yes, sir.

Q. Will you describe what that situation is?

A. In digging the shaft for a tunnel they exposed about 50 feet of the 30-inch Consolidated main.

Mr. O'Brien: When?

The Witness: The first part of 1917.

Q. And it is still exposed?

A. Yes, sir.

Q. Is that condition shown on these maps or not?

42606 A. No, sir.

Q. That is, these maps show only the gutter by-passing or the overhead by-passing?

A. Yes, sir.

Q. Mr. Travis, did you at any time take steps to ascertain the temperature of gas in these by-pass transmission mains?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, the witness not having qualified as a gas engineer. It is something outside of the domain of the Lehigh A. B. or M. E.

42607

The Master: I do not see how that is important.

Mr. Ransom: I think it is very important.

The Master: The temperature of the gas in one of these by-pass places may be one thing or another. How does that affect the temperature which is taken at a testing station?

Mr. Ransom: Because gas once reduced in temperature sharply by coming into one of these large mains out in the air, loses its candle power for all time.

Mr. O'Brien: Ransom, Expert, testifying.

42608

Mr. Ransom: It may subsequently be tested in a warm room or a cold room, but if it has once been exposed to a sharp drop in temperature, so that the—

Mr. Chambers: He is away off.

Mr. Ransom (continuing): Light oils become liquid and are precipitated, the fact that it later goes up or regains its temperature in any way, if it does, does not restore what it has lost by having been exposed.

Mr. O'Brien: That is Dr. Munyon talking now. He has not qualified yet.

The Master: I understand that. That is his argument, and what he intends to prove.

42609

Mr. Ransom: You cannot get a witness to contradict it.

Mr. O'Brien: We will contradict it by your own evidence, right here in the big book. Right here we will give him the contradiction, your Honor, and that is another reason that these records for prior years to 1916 should be allowed in evidence.

Mr. Ransom: I shall connect this.

Mr. O'Brien: They have been violating this statute since it was put on the statute books.

42610 G. W. Leroy Travis, Direct.

Mr. Clark: As I understand it, if your Honor please, unless it is proven that the temperature was lower in these by-pass mains than it was in the holder, where it is exposed to the same outside air, there is no loss in the by-pass mains. Having once been exposed to that temperature—

The Master: I am not going to go into this argument, as to what the result is. The only question now is as to whether that question is proper to this witness, asking what the temperature—

42611 Mr. Ransom: I have not asked him that yet. I asked him whether he took any steps to find it out.

The Master: I will allow it.

Mr. Chambers: Exception.

Mr. O'Brien: Why, your Honor, they give the evidence against it right in their own books here.

The Master: Well, what are you worrying about?

Mr. O'Brien: Why, they are repudiating their own testimony.

The Master: Don't worry about that. The

42612 witness may answer.

The Witness: I did.

Q. What was done?

A. A bulb of a recording thermometer was inserted inside of the main.

Mr. Ransom: May this mob subside, so that I may can at least hear my witness?

The Master: Go ahead with the answer.

A. (Continued.) The temperature of the gas in the main, the temperature of the gas inside of the main, was recorded on charts.

Q. That is, you had an automatically recording thermometer?

A. Yes, sir.

Q. Which had been tested before being installed?

A. Yes, sir.

Q. And the recording gauge was left on and automatically recorded?

A. Yes, sir.

Q. Charts changed from day to day?

A. Yes, sir.

The Master: Where was this done?

The Witness: 14th Street and First Avenue, 42614
and 14th Street and Second Avenue.

Mr. O'Brien: When

The Witness: December, 1917.

Mr. O'Brien: What was the occasion of it?

The Master: No, that is enough.

Mr. Ransom: I object.

By Mr. Ransom:

Q. This work was done under your direction?

A. Yes, sir.

Q. You installed it or saw it installed?

A. Yes, sir.

Q. Saw that they were properly installed?

A. Yes, sir. 42615

Q. Have you those charts—

Mr. Clark: I object to that and move to strike it out.

Mr. O'Brien: I move to strike that out. The witness has not qualified as a gas engineer.

The Master: Overruled.

Mr. O'Brien: Or as a chemist.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. Have you those charts from this recording thermometer with you?

A. I have.

Q. Will you produce them?

A. (Witness produces records.)

The Master: For what period?

Mr. Ransom: I do not know.

The Witness: About December 19th, the date is on each chart there. I think it is December 19th to December 27, 1917.

Mr. O'Brien: Did you say 1917, Mr. Travis? 1917 you took these, or 1919?

The Witness: Yes, sir; 1917.

42617 By the Master:

Q. Did you only have this thermometer there for a few days?

A. That is all.

Q. For about a week?

A. Yes, sir.

By Mr. Ransom:

Q. That is in the winter of 1917?

A. December, 1917.

The Master: He said December, 1917.

By Mr. O'Brien:

Q. Any other time?

A. I beg your pardon?

42618 Q. Did you have them any other time?

A. No, sir.

Q. During the blizzard, you mean?

The Master: That was no blizzard.

Mr. Chambers: That was when the Master said it was 13 below.

The Master: That was good cold weather.

Mr. O'Brien: That was the day you stood on the Mount Vernon track.

The Master: No, four days after.

Mr. Ransom: The 22d of December

42619

The Master: The last day of December or the 1st of January. Some weather!

Mr. O'Brien: Well, what were you doing in Mount Vernon?

The Master: I was in good company.

Mr. O'Brien: I wish Mr. Scar would pull off that blizzard before you go down to Florida. It will spoil your trip again and bring you back.

The Master: No, you don't wish that; you wish I would go away and stay away.

Mr. O'Brien: I don't care what he pulls off after you get in Cuba.

Mr. Ransom: I offer these charts in evidence. 42620

Mr. Chambers: I object to them, on the ground that they are fragmentary and so forth; incompetent, irrelevant and immaterial.

Mr. Clark: On his own theory he has not proved the temperature of the mains in the by-pass was any different from these.

Mr. O'Brien: Who examined this thermometer?

Mr. Chambers: Hearsay, secondary evidence; all the grounds that are found in the different textbooks on evidence; Stevens' Digest.

Mr. Ransom: Moody's Manual, and the Koran and the Talmud.

42621

Mr. O'Brien: We have got to know something more about that, your Honor, before those can be admitted with our objection.

Mr. Ransom: I shall connect this.

Mr. O'Brien: How they took the temperature.

Mr. Ransom: The temperature takes itself upon these. Is it objected to on the ground that the weather is the best evidence?

Mr. Chambers: I thought they offered in evidence already what the weather was, or tried to, by Mister—Scarr, was his name?

Mr. Clark: I think it was Mr. Scarr.

Mr. Chambers: They showed what the weather was in, around and about New York City during this time.

Mr. Ransom: This shows the effects of weather.

Mr. Clark: It does not show much.

The Master: You may cross-examine preliminarily.

Mr. Ransom: That is all of my examination.

Mr. Chambers: You will let us cross-examine

42623 preliminarily?

The Master: To the offer, yes.

Mr. Chambers: To these in particular?

The Master: Yes.

Mr. Chambers: All right.

By Mr. Chambers:

Q. What kind of machine did you say you had?

A. A recording thermometer.

Q. A recording thermometer?

A. Yes, sir.

Q. What kind of a machine is that?

A. It is a machine which records the temperature of the air, or anything else.

42624 Q. What make was it, do you know?

A. I think it was—I am not positive of the name, but I think it was the Industrial Recording Thermometer.

Q. You do not know the age or condition of the machine, do you?

A. We had it checked.

Q. Who was it checked by?

A. By an engineer of the Industrial Company.

Q. And he said the machine was all right, did he?

A. Yes, sir.

Q. Who was he, what was his name?

A. A Mr. Patrick.

By the Master:

Q. Did you see him test it?

A. No, sir.

Mr. Chambers: You don't know yourself—

Q. Did he make the report to you?

A. He reported to my man.

Q. He did not report to you?

A. No.

Mr. O'Brien: This is all hearsay, your Honor.

By Mr. Chambers:

Q. You do not know what kind of a test he made, do you? 42626

A. No, sir.

Q. Who set up the machine?

A. One of my assistants, under the direction of Mr. Patrick.

Q. You did not, though?

A. No, sir.

Q. And where did you put it, hang it around the pipe, or on top of the pipe, or what?

A. The bulb was inserted inside of the pipe.

Q. How did you get inside of the pipe to do that?

A. We tapped a hole in the pipe, put a 1-inch pipe—

Q. Why didn't the gas escape when you were doing that? 42627

A. It did.

Q. What?

A. It did.

Q. And which gas did you test, the gas that escaped or the gas that did not escape?

A. After we had it set it did not escape.

Q. What?

A. After we had it set the gas did not escape any longer.

Q. Who did that, who tapped the main?

A. You mean what particular man?

Q. Who did that, what man?

Mr. O'Brien: Yes, what man?

Q. Who is the fellow?

A. I don't know the man's name. One of our men, one of our workmen tapped the main.

Q. And who placed the instrument?

A. Mr. Shaughnessy.

The Master: Is that the man that Mr. Patrick certified this machine to?

The Witness: Yes, sir.

4262S The Master: I think you had better have him.

Mr. Chambers: No, Shaughnessy is not a mechanic.

Mr. Ransom: He was there.

The Master: No, he was not.

Mr. Ransom: He was there when it was installed; weren't you?

The Master: No, he was not there when it was tested. Patrick did not certify it to him. I do not think we can take that.

Mr. Ransom: I will consent that this be marked for identification and I will get Mr. Shaughnessy.

4263O The Master: Yes.

Mr. Ransom: Of course, this objection absolutely disposes of the City's so-called candle-power test, because they have no proof of calibration of thermometers, or anything of that sort; if this objection is well founded.

Mr. Clark: But you did not make that objection.

Mr. Ransom: I surely did; that is exactly what I made.

Mr. Chambers: We will stand on the proof as we presented it.

Mr. Ransom: Or fall. May I have this marked for identification?

The Master: Yes.

Mr. Ransom: I can get Mr. Shaughnessy by tomorrow.

Temperature charts marked Complainant's Exhibit No. 484 for identification.

The Master: Is there any cross-examination?

Mr. Chambers: Is he all through?

Mr. Ransom: All through.

Mr. Chambers: There is cross.

The Master: You have in mind now that what 42632
this witness has testified to on direct is the by-passing of this gas at certain points, gutter and overhead. Now, you can test the accuracy of his statements in that regard, and likewise attack his credibility if you think he is to be discredited.

Cross-examination by Mr. Chambers:

Q. Now, take this map here, it shows only just a few of the mains, does it? I am speaking now of Exhibit 479. It does not show the Consolidated Gas Company's mains in other streets?

A. It does not show mains in any of the streets. 42633

Q. Now, let us come right down here to—what street is this?

A. Canal Street.

Q. To Canal Street. Here is a little—

Mr. Ransom: Which year?

The Witness: This is 1916.

Q. Canal Street, that is between—

A. Broadway.

Q. Broadway and—

The Master: And the Bowery, he told us that a dozen times.

42634 G. W. Leroy Travis, Cross

Q. Broadway and Fourth Avenue?

A. The Bowery.

Q. The Bowery. How many mains were there in Canal Street between those two, between Broadway and the Bowery, of the Consolidated, in the street there?

A. How many?

Q. Oh, several, were there not?

A. There is more than one; there is a 20-inch—

Q. You have got it marked in three places for overheads—not four.

42635 A. No, two. There is an overhead, one overhead goes from here to here (indicating).

Q. One overhead, we are speaking of the distance between Broadway and the Bowery. Now, what subway were they building there in 1916?

A. The Canal Street Subway.

Q. Canal Street Subway, which was running east and west, was it?

A. Yes.

Mr. Ransom: Let the witness answer.

Mr. Chambers: He did answer. "Yes," you said?

The Witness: Yes.

42636 Q. Subway east and west—

The Master: That is the Fulton Street, Brooklyn, subway, that swings around through Canal into Broadway and up.

Q. Now, take this first overhead here, the 16-inch main

A. Yes, sir. No, that is a 16-inch overhead crossing Canal Street at Lafayette, and replaces a 30-inch Consolidated main.

Q. Now, did you leave any of your mains down underneath and use them while the subway was being built?

A. Under the decking?

Q. Yes.

A. No, sir.

Q. You cut them, did you; or what did you do with the mains?

A. Cut them off on each side.

Q. Cut them off on each side, and you carried one main over, is that the idea?

A. That main was to replace the large main, the 30-inch main.

Q. That was running north and south, in what street?

A. Lafayette Street. 42638

Q. You had mains running up and down Broadway which were not disturbed?

A. Yes, sir; they were not at this time.

Q. At this time; and you had mains running up and down what other streets, coming east of Broadway? There is one carried overhead; that is on what street (indicating)?

A. Lafayette.

Q. Lafayette. Now, where was your next main running north and south?

A. Center Street was not excavated.

Q. Center Street, not disturbed, not excavated?

A. No, sir. 42639

Q. Now, the next one, Baxter Street, did you have one?

A. Yes.

Q. Not disturbed?

A. Yes, half of it.

Q. Half of it?

A. The mains were killed here, north of Canal Street.

Q. Now, let me see. I want to cover this again. The Broadway main was a main not disturbed?

A. Broadway, no subway at that point.

42640 C. W. Leroy Travis, Cross.

Q. No subway?

A. At this time the subway construction was not being done; it was completed.

Q. In Broadway you had more than one main, did you not, running north and south?

A. Yes, sir.

Q. How many?

A. Oh, three or four.

Q. In this Lafayette Street was there just one main running north and south?

A. No, sir, one large one, one 20-inch main.

42641 Q. One large one, and that is the one you carried over?

A. Yes, sir.

Q. What did you do with the small ones?

A. Tied into the gutter bypass.

Q. The next street to the east was Baxter. How many mains did you have in Baxter running north and south?

A. Two. This is a mere guess, you know; I don't know the number of mains in each street.

Q. My point is, there were several in each street?

A. I don't know. There may be only one in each street; I don't know.

42642 Q. You say two is your best guess?

A. No, I won't guess; subject to verification.

Q. Well, at least one; and you only cut half of that?

A. What?

Q. That one in Baxter Street.

A. No, but the mains in Baxter Street were all tied into the bypass on the north side of Canal Street.

Q. How about the mains in the next street?

A. Mulberry, the same thing.

Q. Mulberry the same thing?

A. Yes, sir.

Q. And the next street, which was Mott?

A. The same thing.

Q. Elizabeth Street?

A. The same thing.

Q. And then we come to the Bowery.

A. All the mains were cut off crossing Canal Street and the Bowery.

Q. Then we come over here to—

A. The subway ended there.

Q. The subway ended there?

A. There was all underground work.

Q. Then you had mains running north and south 42644
from the Bowery clear over to where, to about the East River?

A. Yes, they run over that way.

Q. All up and down the streets?

A. Yes.

Q. Where was the testing station here, do you happen to know?

A. Grand and the Bowery.

Q. Grand and the Bowery. Now, that is a couple of blocks north of where this was going on, is it not?

A. Yes, sir.

Q. Now, where is your station, your holder, nearest to that Bowery, do you recall? 42645

A. 14th Street.

Q. 14th Street; that is north of there?

A. Yes, sir.

Q. There are no holder stations south of Canal Street, are there?

A. No, sir.

Q. So that the gas from the 14th Street holder hit that testing station before it struck any of this subway work south of Canal Street?

Mr. Ransom: Objected to as not within the witness's knowledge.

The Master: Let him state if he knows. What is the answer?

Mr. Ransom: Well, he will qualify him as an expert if he does.

The Master: What is the answer? I asked him if he knew.

The Witness: Not necessarily.

Q. Was the holder at East 14th Street the nearest?

A. Yes, sir.

Q. The holder there, that holder is out in the air, is it not? I mean, the holder is up in the air; so

42647 that, the gas being in the holder, if the temperature was the same at that holder on the same day it was down here where it was exposed, why, the gas would be exposed to the same temperature if the temperature was the same?

A. I don't know.

Q. Well, you cannot tell that if you do not know that.

A. No, I don't know.

Q. If the holder was out doors, and the mains were out doors, and the temperature was zero, why they would both be zero, would they not?

Mr. Ransom: I object to that.

42648 Mr. Chambers: Are you flying in the air now?

Mr. Ransom: I am making an objection.

The Master: Do you know, Mr. Travis? Would the temperature be the same in the holder because it is exposed as it is in this pipe?

The Witness: I don't know, your Honor.

The Master: Was there not some evidence in this case that these holders were heated?

Mr. Ransom: Chambers does not know the evidence.

Mr. Clark: Some holders were.

Mr. Ransom: Try to operate one not heated.

Q. Did you cover your pipes with anything down here?

A. No, sir.

Q. These overheads?

A. No, sir.

The Master: Covered with mud a good part of the time down there, were they not? Oh, no, not the overhead.

The Witness: The gutter by-passes.

Q. The gutter by-passes were covered up?

A. No, sir, only when we could not help it.

Q. And how long did you leave this little space ex- 42650
posed here (indicating)?

Mr. Ransom: I object to his calling it a little space.

The Master: Oh, let him call it anything he pleases.

Q. Between Broadway and the Bowery?

A. That was exposed for about two years.

The Master: Is that what you said was a little space, Mr. Chambers? Mr. Chambers? Or Mr. Travis, is that the place that Mr. Chambers designated as a little space, between Broadway and the Bowery?

The Witness: Yes, sir. 42651

Mr. Chambers: Well, it looks little on this map.

The Master: Yes. Well, let the record show that it is quite a distance from Broadway to the Bowery.

Mr. Chambers: Between Broadway and the Bowery.

The Master: Quite a little distance.

Mr. Ransom: Half a mile, isn't it?

The Master: More than that.

Q. Where is the holder here, do you remember?

42652 G. W. Leroy Travis, Cross.

The Master: Probably close to half a mile, probably seven-eighths of a mile?

Mr. Ransom: Now, Mr. Travis, you will have to speak up so we can hear you.

The Witness: 14th Street—

Q. The holder here is away over on the East River here, 14th Street?

A. 14th Street and Avenue C.

Q. Now, there are mains, are there, running north and south on Second Avenue; are there?

A. Yes, sir.

42653 Q. First Avenue?

A. Yes, sir.

Q. Avenue A?

A. Yes, sir.

Q. Avenue B?

A. Yes, sir.

Q. Avenue C?

A. Yes, sir.

Q. Avenue D?

A. Yes, sir.

Q. Mains running in all these intervening streets?

A. I am pretty sure there are.

Q. And whose mains were these that were carried

42654 over here, between the Bowery and Broadway, on Canal?

A. Whose mains?

Q. Yes

A. This sixteen-inch overhead replaced a twenty-inch Consolidated; the twelve-inch overhead replaced a fifteen-inch Mutual and a twelve-inch New Amsterdam.

Q. That is all?

A. That is all the overhead. The overhead at Lafayette Street, 16 inch overhead at Lafayette Street, replaced a 30 inch Consolidated main.

Q. Now, how many mains are there in those different avenues, I asked you? There is more than one, is there not?

A. Which avenue?

Q. Take Second Avenue first—

By the Master:

Q. Second over to A?

A. There is more than one main, yes, sir.

Q. In each street?

A. Yes, sir.

By Mr. Chambers:

Q. Of the Consolidated Gas Company? You do 42656
not have to look at Mr. Ransom.

The Master: Do you recall, Mr. Travis?

The Witness: I would hate to say, your Honor, I don't remember how many mains there were in each street.

Q. Well, you said you knew the mains?

A. I do, in a general sort of way. You asked me what main is in 15th Street.

Q. No, I asked you how many were in those avenues, how many mains of the Consolidated Gas generally?

Mr. Ransom: I object to the question.

Q. More than one? 42657

Mr. Ransom: He has testified to his knowledge.

By the Master:

Q. Let Mr. Travis say now whether he can say without going back to the office and looking at his records, how many mains there are in Avenue A?

A. I would rather consult my records.

Q. Do you know how many there are in Avenue C?

A. No, sir, not offhand.

Q. Do you know how many there are out here on 44th Street?

A. No, sir.

Q. Or out here on Sixth Avenue?

A. No, sir.

Q. Do your records show?

A. Yes, sir.

Q. If you have to do some work here what do you do?

A. Look at the records.

Q. You do not rely on your memory?

42659 A. No, sir.

By Mr. Chambers:

Q. Now, are all these mains all over the City, especially around this district here we have been talking about, these different avenues—the gas is all intermingled, is it not, from one into another, cross streets, mains, and everything? It circulates all around, does it not?

Mr. Ransom: I object to that as incompetent.

The Master: I will let the witness state if he knows.

Mr. Ransom: Not cross-examination.

The Witness: I don't know.

42660 Mr. Ransom: I have not attempted to qualify the witness as an expert on gas.

The Master: The witness says he doesn't know. Now, let us get to something else.

Mr. O'Brien: I think we can shorten this by adjourning this cross-examination and requiring the witness to come in here with his main maps. Let us get right down to brass tacks.

The Master: Well, I do not agree with you.

Q. You will say this, won't you, Mr. Travis—

Mr. O'Brien: Bring in your main maps here. For all we know these overheads they are talk-

ing about—they love to talk about overheads—may not affect it.

The Master: I am going to instruct the stenographer to take nothing but questions and answers, unless I give specific instructions to take something else. I am going to stop this.

Mr. Chambers: I asked if the streets were full of mains here, all over the City, gas mains.

Mr. Ransom: Objected to as vague and indefinite.

The Master: Objection overruled.

A. In some streets there are one, in some streets 42662
there are two, in some streets there are three.

Q. Of the Consolidated Gas Company?

Mr. Ransom: Objected to. The witness has already stated—

The Master: Overruled.

Mr. Ransom (continuing): That he has no recollection of these things.

The Master: Then the witness ought to have sense enough to say that he has not, and cannot answer it without looking at his records; but when he undertakes to guess at it, then we lead into this maze of inquiry, that is all.

Mr. Ransom: The witness is not a lawyer. 42663

The Master: He is a man of intelligence.

Mr. Ransom: He is.

The Master: He ought to be able to say that he does or does not know, when I directed his attention to the fact that he probably could not remember it without looking at his records.

By the Master:

Q. Answer the question, Mr. Travis; can you tell Mr. Chambers whether there are one or two or three mains in any one of these streets or avenues?

A. No, sir.

42664 G. W. Leroy Travis, Cross.

Q. Whether they are Consolidated mains or some other mains?

A. No, sir.

Q. There are undoubtedly mains running through all these streets?

A. Yes, sir.

Q. Practically every street that Mr. Chambers has mentioned?

A. Yes, sir.

Mr. Chambers: North and south?

Q. North and south—

42665 Mr. Chambers: And east and west.

Q. (Continuing.) And east and west?

A. Yes, sir.

Q. And there is gas in all of them?

A. Yes, sir.

By Mr. Chambers:

Q. It can go from one into the other, it intermingles, does it?

A. I don't know.

Q. It runs loose there, in these different mains?

Mr. Ransom: Objected to as fully covered.

The Master: The witness has said he does not know. Do not ask it again. You have got your

42666 proof on that.

Q. Now, 79th Street up here, do you know where the testing station is up here (indicating on map)?

A. 79th Street and Third Avenue.

Q. Where are the holders near 79th Street, near that testing station?

A. 62nd and 63rd Streets, and Avenue A.

Q. Now, there are no subways between that 63rd Street and the 79th Street testing station, are there?

A. No, sir.

Q. Up above here, north of the testing station at 79th Street, where are the holders, the nearest holder?

A. 99th Street.

Q. There is no subway construction up around there, or was there?

Mr. Ransom: When, in 1916?

Mr. Chambers: Sir?

Mr. Ransom: You are referring now simply to 1916?

The Master: Yes, the record so shows.

Mr. Chambers: I am speaking about Exhibit 479 all the while.

Q. There was no subway construction up there, of any kind? 42668

A. No, sir.

Q. In 1916?

A. No, sir.

Q. Here is some subway construction, I see here, on 14th Street.

Mr. Ransom: Why "a little" subway construction? May the record show what you refer to: University Place to Avenue D, is it?

Q. You have some work here at Union Square, I see. How did the mains run there, what kind of a main was running east and west on East 14th Street, do you remember how many were in that street?

A. No, sir. 42669

Q. You have any idea?

A. No, sir.

Q. How many did you carry overhead there at Fourth Avenue?

A. None.

Q. No overhead?

A. No, sir.

Q. Were there any by-passes there, at Fourth Avenue, along here (indicating)?

A. That represents a gutter by-pass from Avenue B to Fourth Avenue on both sides of 14th Street.

Q. Now, you had mains in East 15th Street, did you?

A. Yes, sir.

Q. And East 13th Street?

A. Yes, sir.

Q. Running east and west?

A. Yes, sir.

Q. And you had mains in these different avenues I have asked you about, running north and south?

A. Yes, sir.

Q. Those were not disturbed, those mains in East
42671 15th and East 13th Streets, were they?

A. No, sir.

Q. Up to, say, this Fourth Avenue?

A. Fourth Avenue, no, sir.

Q. They were disturbed in one place here, the East 13th Street main and the East 12th Street main were carried overhead?

A. Yes, sir.

Q. All the mains in that street, or just one?

A. At 12th Street there were two mains.

Q. Carried overhead?

A. Carried overhead; and at 13th Street there were two mains carried overhead.

42672 Q. Were there any that were not carried overhead?

A. No, sir. The small mains were tied into the gutter by-pass.

Q. Were those covered up in any way?

A. Those overhead mains? No, sir.

Q. How about the gutter mains, were those?

A. No, sir.

Q. How long were those in that condition there, on East 13th and 12th Streets?

A. About three years.

Q. That place I have been talking about is north, is it not, of the holder at East 14th Street?

Mr. Vilas: Objected to as contrary to the facts, already testified to.

The Witness: No, sir, it is not north.

Q. Well, west?

A. It is south and west.

Q. South and west. Well, where did you say the holder was here?

A. 14th Street and Avenue C.

Q. Well, is it directly west?

A. No, sir. You are talking about 12th and 13th 42674
Streets.

The Master: It is a block south.

The Witness: Two blocks south.

The Master: Four or five blocks west.

The Witness: And six blocks west.

Q. West; but the overhead on 14th Street is west?

A. There is no 14th—

Q. Well, the holders are not right in 14th Street, are they?

A. North of 14th, between 14th and 15th Streets.

Q. They are between 14th and 15th Streets, at that station over there you mean, that manufacturing station. Now we will take a look at Exhibit 480. 42675

The Master: Do not do much more, Mr. Chambers, than take a look at it.

Mr. Chambers: Why?

The Master: All the questions you have asked with reference to the 1916 map are applicable to the 1917 map, except where the 1917 map shows that certain of these by-passes have been eliminated and discontinued. There is no sense in asking all of these questions all over again; the condition is very much the same.

Q. Well, there is no subway construction in 1917—

The Master: Well, the map shows that some of that has been discontinued, that appeared in 1916; and much that you have brought out by your inquiry is apparent from the map itself.

Mr. Vilas: The map shows 14th Street.

The Master: The minute you bring out from the witness that all these streets and avenues in and about the sections you have been discussing have these mains, gas mains, running up and down
42677 and east and west, and you point out that except as some of the spots have been eliminated in 1917, and perhaps one or two spots added, conditions are the same with reference to all other City property; isn't that so, Mr. Travis?

The Witness: Yes, sir, the records show.

Q. These few mains that were exposed on the 1916 and 1917 maps, overhead and gutters, are almost zero compared with all the mains in the streets?

Mr. Vilas: I object to that question.

The Master: I will not allow that. I can draw my own inferences, and you have ample basis for argument.

42678 Q. Well, how many thousand miles of mains were exposed?

Mr. Vilas: I object to that as already covered.

The Master: The record shows. This map that is in evidence, for 1916, 1917, 1918 and 1919, gives the entire Manhattan Island, shows a great mass and maze of streets that we have up and down east and west, and all this is pure argument. It is not necessary. It is a waste of time, Mr. Chambers. If I thought I were preventing you from proving a fact I would not do it. I would let you ask the questions; but it must be apparent to you, as it is to me—

42679

Mr. Chambers: You see, there is no subway construction.

The Master: I saw that long before you referred to it. There is nothing north of 60th Street, from Fifth Avenue to the East River; there is nothing for many blocks, 15 blocks or more, north of 79th Street.

Mr. Chambers: There is not much going on at the Bowery here at this time.

The Master: On these conditions in and about Grand Street you have ample basis for all the argument you want to make, but do not let us waste time by asking unnecessary questions. 42680

Mr. Chambers: Well, the conditions down at the Bowery have pretty nearly been eliminated there.

The Master: But it shows on the map. You do not have to ask the witness whether that is so, and point it out.

Mr. Chambers: Now, let us see about 1918.

The Master: The same conditions, except that it got a little better there.

Mr. Chambers: Still better. Still nothing at 79th Street.

The Master: The map shows what the condition is. 42681

Mr. Chambers: The Bowery is practically eliminated.

The Master: Well, do not take any more of this, Mr. Stenographer.

Mr. Vilas: I object to statements of that sort.

The Master: I have made my ruling. At least, I have made my suggestion to counsel. If he thinks there is still some question he wants to ask, I will let him ask it, if it is within—

Mr. Chambers: Well, take Exhibit 482.

The Master: That is the 1919 map.

42682 G. W. Leroy Travis, Cross.

By Mr. Chambers:

Q. Practically all the overhead and by-passes are gone, are they not?

The Master: I will not allow the question. The map shows what is there.

Q. How long did those last that are shown on Exhibit 482? Are they there now, or are they all gone?

A. The ones crossing 14th Street are still there.

Q. Yes; how about this—

A. (Interposing.) The one up here has been re-

42683 moved.

Mr. Vilas: Indicating 60th Street.

A. (Continued.) 60th Street and Park Avenue.

Q. That has been removed. When was it removed, do you know?

A. The latter part of last year.

Q. The latter part of 1919, you mean?

A. Yes, sir.

Q. Where did you get your information from that you could tell where the gas came from?

The Master: He did not say.

Mr. Vilas: I object to that. He has not said he did.

42684 The Master: He did not say he knew at any time.

Q. On direct-examination—

The Master: I asked him where some mains came from.

Mr. Chambers: What is that?

The Master: I asked him where some mains came from.

Mr. Chambers: I understood him to say that he knew where the gas came from.

The Master: No, he has said repeatedly he did not know.

Q. That is a fact, is it, that you do not know?

A. Yes, sir.

Q. Do you know what district was supplied by gas which passed through the exposed mains, any of the exposed mains, of your own knowledge?

A. No, sir.

Q. You say none of these exposed mains were protected in any way?

The Witness: May I have that question read again?

(The question was read.)

Mr. Vilas: I object to that; the witness has 42686
not said that.

The Master: I will allow it.

Q. As to weather conditions?

A. I don't quite get that question yet.

The Master: Well, that is your answer to it, you do not understand the question.

Q. Were the mains protected, covered up with any kind of material?

A. What, these overheads? No, sir.

Q. And the gutters?

A. No, sir.

Q. None of them?

A. No, sir. 42687

Q. In any of the places?

A. No, sir.

The Master: They are simply temporary things.

Mr. Chambers: Now the photographs.

(Photographs produced by Mr. Vilas.)

Q. Who took these photographs, Mr. Travis?

A. I don't know.

Q. Well, how do you know when they were taken?

The Master: He did not say when they were taken.

Q. Take this one, marked Exhibit 483; have you any idea when that was taken?

A. No, sir.

Q. That shows the main carried across the street, the mains you spoke of, just at a height a little higher than the trolley car.

A. About 13 feet between the bottom and the street surface.

Q. How much of a length was that main exposed, do you know; how many feet?

A. About a hundred—

42689 Q. The width of that street, have you any idea?

A. About 125 feet, 150 feet.

Q. And some of them were exposed— Well, let's see another. That will be about the widest, the longest exposure, wouldn't it (exhibiting photograph)?

A. No, sir, there are some longer than that.

Q. How long?

A. 200 feet.

Q. Would that be about the longest distance?

A. At that place, 14th Street? Yes.

Q. Yes, that other one. That was 14th Street, was it?

A. 14th Street and Second Avenue, the other one

42690 was.

Q. Now, Exhibit 483, No. 2, that is one main that comes up there and crosses—

A. Two mains.

Q. Two mains that come up and cross. One is exposed for a little longer distance than the other?

A. Yes, sir.

Q. About how many feet is that, do you remember?

A. About 150 feet.

Q. Where is that?

A. 14th Street and First Avenue.

Q. Who took that photograph, do you know?

A. I don't know.

Q. Have you any idea when it was taken?

A. No, sir.

Q. Now, here is one, Exhibit 483-3; do you know who took that?

A. No, sir.

Q. Have you any idea when it was taken?

A. No, sir. I know it shows the condition as it exists there today on all of these; I know that.

Q. None of them have been changed?

A. No, sir. 42692

Q. And they have been in that condition—

A. Since March, 1917.

Q. And that exposes two mains?

A. Yes, sir.

Q. Do you recognize which company's mains those are?

A. I recognize this one, offhand, as being the overhead to take care of the 24 inch Consolidated main (indicating).

Q. What is that smaller one there? In what street is this?

A. That is Second Avenue and 14th Street. That replaces the 18 inch Consolidated main. 42693

Q. That little one there?

A. Yes, sir.

Q. Those are both, then, Consolidated?

A. Yes, sir.

The Master: I have been all through that. I had him identify all those mains.

Q. This No. 4, who took that photograph?

A. I don't know.

Q. You don't know when it was taken?

A. No, sir.

Mr. Chambers: Did you have him identify those two mains as what company's?

The Master: Yes, I asked him about all of them.

Mr. Vilas: Every photograph.

Q. Well, do you recognize whose mains those are?

The Master: I will not allow it. I just said I asked him those questions.

Mr. Chambers: Did you ask him whose mains, or what company?

The Master: Yes, I asked him what they were.

42695 Mr. Chambers: Well, I take an exception.

Q. Now, here is a main here; who took that photograph, do you know (showing witness photograph)?

A. No, sir.

The Master: The question is not allowed.

Mr. Chambers: Exception.

The Master: I rule that it is unimportant who took it or when it was taken, if the witness swears that they are correct representations.

Mr. Chambers: Exception.

Q. What is this one here, 483—

Mr. Vilas: They are all one exhibit, Mr. Chambers.

42696 Mr. Chambers: Well, it looks like No. 5.

Q. That shows an exposed main in the gutter?

The Master: The question is not allowed.

Mr. Chambers: Exception.

Q. And do you know whose main that is, that one shown in the gutter?

The Master: The question is not allowed; already covered.

Q. Do you know who took the photograph and when it was taken?

The Master: Not allowed, under the ruling previously made.

Mr. Chambers: Exception.

Q. Now, have these mains that you have been speaking about, that were by-passed, been used all the while, or were they cut off some of the time?

A. In use all the time.

Q. You did not use them while you were changing them, did you; you had to cut them off, did you not?

Mr. Vilas: I object to that question as meaningless.

The Master: I will allow it. 42698

A. If the overhead is erected prior to cutting the main off in the street, the minute the original main is—

Q. Well, how did you do it?

Mr. Vilas: Let him finish his answer.

Mr. Chambers: Yes.

A. (Continued.) As soon as the main is cut off in the street a connection is made carrying the gas from the main in the street up overhead, the same day.

Q. That is the way you did it?

A. In all cases, yes, sir.

Q. And do you plug the old main that you cut off; 42699
did you?

Mr. Ransom: They hold their hand over it; they have got a man up there holding his hand over it.

Q. How did you do it?

A. Capped them.

Q. Capped them?

A. Yes, sir.

Q. How did you connect up the main that you cut off with the by-pass mains?

Mr. Vilas: Objected to as immaterial; it is not cross-examination.

The Master: Well, let him tell.

A. What was that again?

The Master: How did you make your connection?

Q. How did you connect up the by-pass or gutter main with the main that you cut off?

A. With wrought iron pipe and fittings.

Q. That is the way you did it?

A. Yes, sir.

42701 The Master: How else could he do it?

Mr. Chambers: That is what I would like to know, how he did it.

Mr. Vilas: Rubber hose?

Q. Now, where is this main that you speak of, that is not shown on the map or shown in the photographs, of which 50 feet was exposed in 1917?

Mr. Vilas: I object to that; that is not the testimony.

The Master: I will allow it.

Q. Was there such a main?

A. There was a 30 inch main crossing Avenue D at 14th Street, which was exposed for about 50 feet

42702 Q. For how long?

A. From the early part of 1917 to the present date.

Q. And that is not shown on these maps?

A. No, sir.

Q. Or these photographs?

A. No, sir.

Q. Then I was right in my statement?

The Master: You need not answer that; go ahead.

Q. Whose main is that?

A. Consolidated.

Mr. Chambers: I think that is all for the present.

The Master: Some day I hope to hear one of you men say you are through, without adding "for the present."

Mr. Chambers: No, I suspend.

The Master: Anything else?

By Mr. O'Brien:

Q. Why, Mr. Travis, who first told you about coming here to testify?

Mr. Vilas: Objected to.

The Master: I will allow it. Who first told 42704
you to come here and testify?

The Witness: Mr. Addicks.

Q. What did he tell you to bring?

Mr. Vilas: Objected to as immaterial, and not cross-examination.

The Master: The question is allowed.

A. He told me to bring the by-pass plans, which I have shown here, the temperature charts—

Q. Did he tell you not to bring the maps that show the mains?

Mr. Vilas: Objected to.

A. No, sir.

The Master: Allowed. 42705

Q. Why didn't you bring the maps that show the mains?

Mr. Vilas: Objected to.

The Master: The question is allowed.

A. I could not carry them.

The Master: Well, you had no idea you were going to be asked that kind of a question, did you?

The Witness: No, sir.

Q. Didn't you expect to be asked what connection the mains that were by-passed here had with the testing stations, on the Bowery and 79th Street?

Mr. Ransom: Objected to as immaterial, not proper cross-examination.

The Master: Overruled.

Mr. Ransom: The witness, of course, brought only what he was asked to bring in respect of the matters he was to be interrogated about.

The Master: Overruled.

A. I don't know.

Q. You don't know?

A. No, I didn't know what I was going to be asked.

42707 Q. You hadn't any idea that the subject of your coming here and your maps bore upon the tests made by the city at their testing stations?

A. No, sir.

Q. Of the gas of the several companies?

A. No, sir.

Q. Well, are you able to say now, take these maps and say what mains run down the Bowery?

Mr. Vilas: Objected to as not proper cross-examination, and fully covered.

The Master: Objected sustained, on the ground that it has been fully covered by Mr. Chambers.

Q. What was done with the other companies' mains,

42708 when these mains were by-passed?

The Master: Same ruling. Already covered.

Mr. O'Brien: Exception to all these rulings.

Q. Did you ever take the temperature of gas in mains, since you have been assistant superintendent?

The Master: Yes, you can answer that now, Mr. Travis.

A. Yes.

By the Master:

Q. Where?

A. 14th Street and First Avenue.

Q. Is this the temperature shown on these charts?

A. Yes.

The Master: Offer the charts in evidence; I will take them now. Those charts will now be received.

Mr. O'Brien: Over my objection. Objected to as incompetent, irrelevant and immaterial.

Charts heretofore marked Plaintiff's Exhibit 484 for identification received in evidence and marked Exhibit 484.

Mr. O'Brien: They are admitted now on the direction of the Master?

The Master: They are admitted because you have opened the door for them now, and have 42710
qualified them in my opinion.

Mr. O'Brien: I have qualified them?

The Master: Yes.

Mr. O'Brien: Well, I note an exception. He was asked a number of questions about taking temperatures before the diagrams in question were offered in evidence, your Honor.

The Master: Go ahead.

Q. On what occasion did you take temperature of mains?

Mr. Ransom: Objected to.

The Master: I will allow it.

The Witness: What was that question? 42711

The Master: When did you take this temperature of gas?

Q. When did you take this temperature?

A. When?

Q. At 14th Street and Avenue A?

A. The latter part of December, 1917.

Q. You mean on this occasion?

A. Yes, sir.

Q. But my question was on what other occasions you took temperature?

The Master: That was not your question.

Mr. Ransom: That was not your question.

Mr. O'Brien: My question was, if the stenographer will read it—with all deference to your Honor, turn back to the question.

The Master: The stenographer will not turn back to anything. The Master states—

Mr. O'Brien: I said, "On what other occasions did you take the temperature of mains?"

The Master: That is what you are asking him now. Now you can ask him that.

42713 Mr. O'Brien: No, your Honor, that is what I asked him, if I may differ with you, before.

The Master: Don't you want to ask him now?

Mr. O'Brien: May you not be in error?

The Master: If I am the record will show it.

Mr. O'Brien: Will you withdraw your direction as to the exhibit?

The Master: I will not.

Mr. O'Brien: In the event that you find that the question was, "On what other occasion did you take the temperature?"

The Master: No, the record will stand as it is now.

42714 Q. Repeating the question which I have put twice before, on what other occasions have you ever taken temperature of gas in mains?

Mr. Ransom: Objected to—

The Master: Just one minute, Mr. Travis. That question is not allowed. A question will be allowed, "On what other occasions than the latter part of December, 1917, indicated by these charts, did the witness take temperature of gas in mains?"

Mr. O'Brien: Go ahead, Mr. Travis, if you know.

The Witness: The dates are noted on those charts.

The Master: No, other than those dates—

The Witness: No.

The Master (continuing): —did you ever take it?

The Witness: No, sir.

Q. What was the reason for taking the temperature at that time?

A. To see what the temperature of the gas was in the mains.

Q. That is the best answer you can give? 42716

Mr. Ransom: Objected to.

A. Yes, sir.

Q. How much salary do you get?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial, not cross-examination.

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Master: Mr. O'Brien seems to think that the way to attack the integrity of a witness is to ask him what his salary is.

Mr. Ransom: To prove how little, so far, the company has been able to pay him.

Mr. O'Brien: I do not need to comment on the answer of the witness. 42717

The Master: Do not take this discussion, Mr. Stenographer.

Q. By whose direction did you take the temperature at 14th Street and Avenue A, in December of 1917?

A. Mr. Woods.'

Q. Did Mr. Woods supervise the taking of the temperature?

A. Did Mr. Woods supervise the taking of the temperature?

Q. Yes, you have got the question right?

A. No, sir, I supervised the taking, at his direction.

Q. Did he send you the machine?

A. No, sir.

Q. Who sent the machine, the thermometer?

Mr. Ransom: Objected to as cross-examining on matters he brought out himself.

The Master: I will allow it.

The Witness: What was the question?

The Master: The stenographer will read it.

(Read.)

42719 A. I don't know who sent it.

Q. When were these maps prepared?

A. About a month ago, during the past six weeks.

Q. At whose direction, Mr. Addicks?

A. Yes, sir.

Q. What did he say to you when he told you to get up these drawings?

A. He did not say anything to me.

Q. Well, what were your directions, wherever you got them?

A. To show on that plan all the by-passes in Manhattan during that year, by-passes and overheads, along the lines of the new subways.

42720 Q. Did he tell you not to put it on a map that showed the mains?

A. No, sir.

Q. What day did he give you these instructions?

A. I said, within the past six weeks.

Q. Well, fix the date, if you can?

A. I cannot.

Q. And who made the drawings?

A. Mr. Aitken.

The Master: It seems to me I have heard all this before.

The Witness: Yes, sir, I think you did.

Q. I show you the map for 1917, being Plaintiff's Exhibit 480, and ask you whether there was any main by-passed, that has any connection with the testing station at East 79th Street?

Mr. Ransom: Objected to as incompetent. The witness has not been offered as an expert on the question of what happens to gas in mains. It calls for a conclusion which the witness has not been offered as an expert to make.

The Master: The objection is sustained upon the ground that the subject has been fully covered by Mr. Chambers. 42722

Mr. O'Brien: Exception.

The Master: I let Mr. Chambers go all over that, to bring out the facts about all the mains, and their relation to overheads and by-passes anywhere near 79th Street. I let him spread it all on the record.

Mr. O'Brien: Then I move to strike out Plaintiff's Exhibits 479, 480, 481 and 482; also the photographs; I will not stop to read the inscriptions.

The Master: Exhibit No. 483.

Mr. O'Brien: The photographs, Exhibit 483.

The Master: Motion denied. 42723

Mr. O'Brien: Exception on the ground that they are incompetent, irrelevant and immaterial, the witness has not shown so far as that part of the testimony that it is alleged he is called to testify about, any connection between the testing stations and the mains that are alleged to be by-passed, the City testing stations.

The Master: Anything else?

Mr. O'Brien: Exception.

By Mr. Clark:

Q. I would like to ask a question. Mr. Travis, at

42724 the time you took these temperature tests in the mains that were by-passed, did you take any temperature tests of mains in their normal condition, in these same neighborhoods?

A. No, sir.

Mr. Ransom: Objected to.

The Master: I will allow it. Did you, Mr Travis?

A. No, sir.

RE-DIRECT EXAMINATION BY MR. VILAS:

Q. Mr. Travis, in 1916, 1917, 1918 and 1919, were
42725 there, and are there now north and south mains of the Consolidated Gas Company in various of the streets and avenues west of Broadway, extending southward from 42nd Street to below 14th Street, and to below Canal Street?

Mr. O'Brien: Objected to as not re-direct.

Mr. Chambers: Haven't you said that there are mains all over the City, anywhere?

Mr. Vilas: They brought out that there were mains in the north and south streets east of this district.

The Master: I do not see the point of it. I do not see where it leads to, but I will allow the
42726 question.

Mr. Chambers: Your Honor stopped me from going into the net work of mains.

The Master: I thought you brought out the mains up and downtown, east and west and all over the City.

Mr. Chambers: The whole City is cobwebbed with mains.

The Master: What is the question about, Broadway?

Q. Are there mains west of Broadway, north and south, between 42nd Street and Canal Street?

A. Yes, sir.

Q. Of the Consolidated Gas Company?

A. Yes, sir.

Q. And there were in all these four years?

A. Yes, sir.

Q. Did you mean to be understood as saying that an exposure of 200 feet of main was the longest exposure aboveground of any of these by-passed mains?

A. No, sir. The question was asked about 14th Street, the mains crossing 14th Street.

Q. Of course it is a fact that there are mains in gutters and overhead that are exposed for very much greater distances than 200 feet? 42728

Mr. O'Brien: I will object to it as leading and improper, and known to be improper by the interrogator.

The Master: I will allow it.

Mr. O'Brien: Exception.

Mr. Chambers: How much longer?

A. Yes, sir.

Q. All right, I will ask him how much longer.

The Master: What is the longest stretch of by-pass gutter main that you recall?

The Witness: Well, during the year 1916, I guess the longest stretch was across Canal Street, from the Bowery to Broadway. 42729

Q. Can you give us any idea of the length of that, in feet?

Mr. Ransom: Oh, he has covered that. How about 14th Street?

The Master: I do not believe he did. You and I were discussing it, but I do not think the witness did.

Mr. Ransom: Yes, I will correct that.

The Master: What did you say the distance is

42730 G. W. Leroy Travis, Re-direct.

from the Bowery over to Broadway, on Canal Street?

The Witness: Half a mile.

Q. How about 14th Street, are the mains exposed lengthwise on 14th Street?

A. Yes, sir.

Q. They are today?

A. Yes, sir.

Q. Is it a fact that you recognize all of the six photographs comprising Complainant's Exhibit 483 as representing conditions as they exist today?

42731 The Master: No, there is one that he said there did not exist.

A. The one I think does not exist—

Q. The one at Broadway and 17th Street, you said?

A. Yes, and Lexington Avenue and 60th Street.

Q. Any others?

A. Those four exist today and these two do not (indicating).

Q. Could you make a test of the temperature of the gas in the mains unless the mains were already exposed, unless you had dug down and exposed it underground?

42732 A. What is that again?

The Master: I will not take that from this witness.

Mr. Ransom: That is just on the point that Major Clark raised.

Mr. Chambers: I object to that.

Mr. Ransom: I think it is sufficient. Withdrawn.

Mr. Chambers: Now, wait a moment. What is the question?

The Master: The question is withdrawn, you need not read it.

Mr. Chambers: I object.

Q. Mr. Travis, your duties are confined to the mains and services of the company in the streets, are they not?

A. Yes, sir.

Q. Do any of your duties take you into the holder stations, or works of the company?

A. No, sir.

Mr. Vilas: That is all.

RE-CROSS EXAMINATION BY MR. CHAMBERS:

Q. Mr. Travis, when you cut into these mains, take the one at the Bowery, could you tell which way the gas was flowing? 42734

Mr. Ransom: Objected to.

The Master: I will let him state. Was the gas flowing east or west, north or south?

The Witness: I don't believe I could tell, sir.

Q. Could you tell?

A. It was coming up out of the hole both ways: you could not tell which way it was coming.

Q. You could not tell whether it was coming or going, could you? Is that the fact? You could not tell whether it was flowing east or west?

The Master: No, neither could I.

Mr. O'Brien: Now, let him answer.

Q. Is that the fact? 42735

Mr. O'Brien: Let him answer, your Honor.

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Master: This witness does not appear to be qualified on that point.

Mr. Chambers: I am asking him when he cuts into the pipes—

The Master: No.

Mr. Chambers: Well, I think when he put his testing machine—well, he did not do that.

The Master: He did not cut the pipes at all.

Q. Well, in your experience in cutting open these mains, can you tell?

The Master: He does not cut them open. He is not a mechanic; he is an engineer.

By the Master:

Q. Did you yourself cut any of these pipes?

A. No, sir.

Q. Did you yourself make any of the connections?

A. No, sir.

Q. Did you yourself make any of the joints?

A. No, sir.

42737 Q. Did you yourself wipe the joints?

A. No, sir.

Mr. O'Brien: Did you yourself see the gas?

The Witness: No, sir.

The Master: Objection sustained.

By Mr. Chambers:

Q. Were you ever there when they cut them open?

A. Myself, no, sir.

Q. Did you ever see the gas, so you could tell which way it was flowing?

Mr. Ransom: Objected to as ridiculous.

The Master: Objection sustained, upon that ground.

42738 Mr. Chambers: Exception.

The Master: Come on; next witness.

Mr. Chambers: I move to strike out the testimony of the witness and the maps and the photographs, on the ground that it is confusing.

The Master: Motion denied.

Mr. Chambers: And of no importance in the case.

The Master: Motion denied.

Mr. Chambers: It does not prove anything.

Mr. Ransom: If the Court please, at this point I would like to call attention to one situation, and

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that is with respect to the cross-examination of the witness Terry. I do not want the conclusion of the complainant's part of this case held up, if it can be avoided, by the failure to cross-examine Mr. Terry promptly. Most of these tests covered by the witness Terry's tabulations were turned over to Mr. Birdsley a number of days ago. Our men have been working day and night on these things, we have offered Mr. Terry for cross-examination this morning, and also this afternoon. Now, Mr. Birdsley has been in court here all the afternoon, he was here when I offered Mr. Terry for cross-examination, and I 42740
do submit that in order that this case may not be delayed in its completion, that any preparation that they desire Mr. Birdsley to do or themselves to do preparatory to cross-examination of Mr. Terry ought to be done without delay.

The Master: Do you want to say anything, Mr. O'Brien?

Mr. Clark: I just want to say that Mr. Birdsley, of course, has his own duties, and is proceeding with this as fast as possible. I would like to defer the cross-examination until he can check these tests. I object and take an exception to the statement that he has been in court here all the time, 42741
today.

The Master: Is there anything you want to say, Mr. Chambers?

Mr. Chambers: Well, I think we should have a reasonable opportunity for checking these papers.

The Master: Is there anything else you want to say on this point, Mr. O'Brien?

Mr. O'Brien: I don't know that I can add anything to that except that I suppose that it means expedition.

42742

The Master: The Master rules that Mr. Terry will be examined tomorrow at 9:30.

Mr. Clark: I must except to the Master's ruling. It is impossible for Mr. Birdsley to do this checking—

The Master: Tomorrow morning Mr. Terry will be cross-examined or not at all.

Mr. Clark: I take exception to the statement that he has been sitting here doing nothing. He was in the other room until they took up this question of candle power.

The Master: Mr. Terry will be cross-examined
42743 at 9:30 tomorrow.

Mr. Clark: There are 510 of these sheets, and I consider that we ought to be entitled to check them up before we cross-examine Mr. Terry, and we cannot be ready before Monday. I do not see why a City department should be turned inside out on account of this case.

The Master: The Master has made his ruling and will hear no further discussion on this point.

Mr. Clark: Exception.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

The Master: The court is now in recess. When
42744 other witnesses are ready the court will reconvene.

(The Master having made a ruling as to the matter that preceded the recess, permits no further discussion and directs the stenographer not to take any further statements. The stenographer will record the fact that Mr. O'Brien is trying to make a statement, and the Master will not let him make any more speeches today.)

Mr. Chambers: Exception.

Mr. O'Brien: I take an exception to the Mas-

ter's ruling in reference to my not being allowed to make a statement. 42745

The Master: Not allowed to make further speeches, state it the way it is.

Mr. Ransom: I would like the record to show that I am at this time furnishing to the defendants the summary statements on the so-called—what has been referred to in the case at times, as the rate base, summarizing the claims of the complainant. During the complainant's case your Honor ruled that you would not receive summaries of that sort as exhibits. I am now furnishing copies of the three summaries which have 42746
been made up to the defendants, and I give notice that in connection with the testimony of Mr. Carter I shall offer these summaries, in view of your Honor's ruling that having taken, for your information, similar summaries embodying the defendant's claim, you will entertain applications by me—

The Master: Yes, I said that, and I likewise said that those I have ruled out on Mr. Chambers' application I would also take as summaries.

Mr. Chambers: I am going to suggest at this time that no papers of any kind be presented to the Court in the way of tabulations unless we 42747
are furnished with copies.

The Master: We will take that up later on. The ruling I am making now is that if I allow these summaries in for Judge Ransom I will allow the summaries that I ruled out for Mr. Chambers.

Mr. Chambers: What are you handing, three summaries?

Mr. Ransom: I am handing three summaries. One is a summary of the cost of property, etc.,

as stated in the title, January 1, 1907, to August 31, 1919, inclusive.

The Master: You need not offer them in connection with Mr. Carter's testimony, or anybody else's testimony. If they are mere summaries of your claims you can have them marked in evidence now, without further proof. They will mean nothing to me except a presentation of a claim that I will look at when I begin to analyze the figures.

Mr. Ransom: There is a computation of interest figured on that rate base, as there was in various of these Sangster and other exhibits.

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The second one is a summary in the same form, only based on the appraisals of Mayer, Simpson and Price, and the schedules of additions and retirements and so on, as shown on the sheet.

The third one is a comparison of the other two.

I have only two copies of one of these, I will give Mr. O'Brien the third copy in a few minutes.

Mr. Chambers: I object to the summaries.

The Master: There is nothing being done, they are just being handed to you.

42750

Mr. Chambers: Well, I make the objection.

The Master: What is the use?

Mr. Chambers: It is the summary way in which the summaries are handed to me.

ARTHUR W. TEELE, recalled in rebuttal, having been previously sworn, testified further as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Teele, you have made an examination of the operating ledgers and other books of account of

the Astoria Light, Heat & Power Company for the years 1918 and 1919?

A. I have.

Q. In this examination were you assisted by a staff which you employed in connection with some of the books and records of the Consolidated Gas Company and other companies?

A. Yes.

Q. Did this staff of assistants do this work under your immediate direction and supervision, in the manner which you have hitherto described?

A. They did. 42752

Q. What books and records of the Astoria Light, Heat & Power Company did you with your assistants examine?

A. The operating ledger, the general ledger, the journal, accounts receivable ledger, accounts payable ledger, suspense ledger, construction ledger, voucher records, distribution of pay rolls, and the accounts receivable blotters, together with the reports upon which the entries in the journal are made.

Q. Following this examination of the Astoria Company's books did you prepare in summary form from the operating ledger of the Astoria Light, Heat & Power Company, and from its reports of manufacture, 42753
a statement showing quantities and the cost of material, labor, et cetera, of gas manufacture by the coal gas process of the Astoria Light, Heat & Power Company for the year 1916, which I now show you?

A. I did.

Q. From what source or sources did you take the figures of quantities used?

A. From the manufacturing reports. They furnish the basis of the figures used. Some of them are figures shown on the manufacturing reports, some of them are compilations of figures shown on the manufacturing reports.

42754 Arthur W. Teele, Direct.

Q. That is, the quantities for the enrichment of coal gas, that is a computation made by the accounting officers of the Astoria Company based on the manufacturing reports?

A. Yes, based on data furnished by the manufacturing reports.

Q. From what source did you take the figures of the amount spent?

A. From the operating ledger.

Q. How did you arrive at the unit prices per quantity used?

42755 A. By dividing the amounts shown by the quantities shown.

Mr. O'Brien: I move to strike out the answer as not responsive, it is too general and vague.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. How did you compute the quantity of material used per thousand cubic feet of gas made?

A. By dividing the total quantities of the materials shown, by the number of cubic feet of gas made.

Q. How did you compute the cost per thousand cubic feet of gas made?

42756 A. By dividing the amounts by the total number of cubic feet of gas made, as indicated on the statement.

Q. In like manner, and from the same sources, have you prepared a similar statement showing quantities and cost of materials and labor in connection with water gas manufactured at the Astoria plant during 1918?

A. I have.

Q. That is the second sheet of this statement which you have before you?

A. It is.

Q. Did you also prepare a statement showing the combined cost of coal and water gas manufactured, as set forth on the two separate statements to which I have referred for the year 1918, and also the charge made to the Consolidated Gas Company for gas sold to the Consolidated Gas Company by the Astoria Company?

A. I did.

Q. As shown by these accounts and records?

A. And as set forth on the third sheet of this statement.

Q. Have these statements to your knowledge been 42758
correctly taken from the books of account and records of the Astoria Light, Heat & Power Company which you have mentioned, for the year 1918?

A. They have.

Mr. Ransom: I offer the statement in evidence.

Mr. O'Brien: How many items are supposed to be in red on this coal gas sheet, Mr. Teele? Just the credits?

The Master: All of the credits are in red on the first copy, are they, Mr. Teele?

The Witness: Well, they are not necessarily credit items. The $207,128.36 against the net cost of coal carbonized is in red; the $25,988.42, 42759
being the credit for tar, is in red; the $35,800.01 against undistributed adjustments is in red; and the $1,067.73, being the item of loss in volume charged to the United States Government, is in red.

Q. And these same figures are in red on the carbon copies likewise?

A. I have not looked at the carbon copies to see.

The Master: Some of the carbons do not seem to have all these figures in red, but that doesn't make any difference.

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Mr. Chambers: That figure down at the bottom .3390, is that the net cost as you figure it? Yes, net cost of coal gas made .3390, is that what that means, and the same with water gas?

The Master: I have just looked at the carbon copies. Some of them are faint, but it is quite apparent that the figures referred to are in red.

Mr. Chambers: Mine appears to check up with the original on the red.

The Master: If there is no objection to the offer I will mark the paper.

42761 Mr. Chambers: I object to it as incompetent, irrelevant and immaterial and not properly proven.

Mr. O'Brien: I object on all the grounds on which I objected to the Teele exhibit of September 17, 1919.

Mr. Chambers: I want to add further, all the grounds that I stated when the books were offered in evidence.

Mr. Clark: I object on all the grounds stated previously, and on the further ground that all the underlying data from which this is made up are not marked in evidence.

42762 Mr. O'Brien: On the further ground that it is not rebuttal.

The Master: Make your statement as to what it rebuts.

Mr. Ransom: Upon our direct case we offered in evidence or undertook to offer in evidence certain facts with respect to the Astoria Company. Your Honor did not receive it, upon the defendants' objection. During the defendants' case they themselves made very elaborate analyses of the books and records referred to by Mr. Teele, made various deductions and computations therefrom.

The Master: And offered the books in evidence.

Mr. Ransom: Offered the books in evidence.

The Master: The objections are overruled and this paper is received.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Clark: Exception.

Statement received in evidence and marked Complainant's Exhibit No. 485.

Q. Mr. Teele, have you prepared in like manner to that already stated by you, and from the same 42764
sources, three statements here combined together showing similar data for the first eight months of 1919, for coal gas manufacture, water gas manufacture, and combined coal and water at Astoria, as you show upon the three statements for the year 1918 just received in evidence as Exhibit 485?

A. I have.

Q. And this is such a statement?

A. It is.

Q. Known to you to be correctly taken from the books of account and records of the Astoria Light, Heat & Power Company for the year 1919?

A. Yes.

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Mr. Ransom: I offer these three sheets in evidence.

The Master: I assume that the same objections are interposed to this as to the 1918 statement. The objections are overruled, exceptions allowed, and it is received in evidence.

Statement received in evidence and marked Complainant's Exhibit No. 486.

Q. Mr. Teele, since you last testified, have you continued your examination into the books of account and records of the Consolidated Gas Company concerning

the transactions recorded in those books of account and records since October 31, 1919?

Mr. Chambers: I object to that as not being rebuttal. I have.

Q. As a result of such examination, have you at my request compiled a statement of the revenues and expenses of the gas business of the Consolidated Gas Company for the calendar year ending December 31, 1919?

Mr. Chambers: I object to that as not being rebuttal.

42767 The Master: I will take his answer that he has.

A. I have.

Q. Was this statement prepared by you in a way similar to the preparation of Exhibits 205, 355 and 382 already in evidence?

Mr. Chambers: I make the same objection, and take an exception.

A. Yes.

Q. Do you know this to be a correct tabulation of the matters and things therein set forth, as shown by the books of account and records of the Consolidated Gas Company?

42768 Mr. Chambers: I make the same objection?

A. It is.

Q. And is this statement which you have prepared the statement of which copies were given to the defendants on January 30, 1920, as shown by the record of that date?

A. It is.

Mr. Ransom: I offer it in evidence.

The Master: Do you offer it as rebuttal?

Mr. Ransom: I do.

The Master: Or as a reopening of your case?

Mr. Ransom: As rebuttal.

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Mr. Chambers: I object to it on the ground that it is incompetent, irrelevant and immaterial, and not rebuttal testimony.

The Master: Objection sustained on the ground that it is not rebuttal.

Mr. Ransom: Let me state my theory?

The Master: Yes.

Mr. Ransom: The defendants have offered and you have received over my objection a mass of proof which, if it had any pertinency whatever, tended to show, or will be claimed to have tended to show future conditions, and to indicate the possibility of operation during the remainder of 1919, 42770
and during 1920, at a lower cost than those shown by Exhibits 205, 355 and 382, and the other proof offered on behalf of the complainant, including the testimony and exhibit of the witness Woods, testifying as an expert upon cost of manufacture and distribution. I offer this in rebuttal of such evidence on the part of the defendants, and in refutation of their claim. They have had this statement for about a month. They have had access, and have utilized access to the vouchers covered by this statement. Mr. O'Brien has himself offered in evidence the entries in the Executive Committee minutes showing a large part of these 42771
costs of operations, down not only to December 31, 1919, but down to the 9th of January, 1920. That has been received, and I submit that this is rebuttal.

The Master: So that the record may be perfectly clear, it is my opinion that this proof now offered, and similar proof offered yesterday, is not rebuttal testimony, as I understand the rule. I repeat what I said yesterday, that if Judge Ransom wants to open his case to extend his proof to the close of 1919 I will grant the application;

but I will not be put into the position of accepting something as rebuttal proof which will in fact mean opening this case and permitting counsel for the other side to come in and meet all this proof, practically a new case involving the last few months of the year, unless counsel for complainant puts himself squarely on the record as asking me to do it.

Mr. Ransom: Then I understand that the objection has been made by the defendants and sustained on the ground that it is not rebuttal?

42773 The Master: My opinion is that it is not rebuttal, and the objection is sustained on that ground. I repeat that if you want to present the matter as new matter in support of your general claims in this case I will take it. I will likewise take what you offered yesterday, on the theory of new matter, in support of your general claim in this case. I will not be forced, however, into the position of taking it as rebuttal.

Mr. Ransom: I am not sure that objection has been made on that ground.

The Master: Yes, Mr. Chambers objected on that ground.

42774 Mr. Ransom: How about other counsel?

Mr. O'Brien: Yes.

Mr. Ransom: And Major Clark also?

Mr. Clark: Yes.

The Master: One counsel is enough.

Mr. Ransom: I take an exception to the sustaining of the objection of the defendants.

Q. Mr. Teele, on various occasions have you as a public accountant been consulted by officers, directors and investors of corporations and business enterprises, concerning financing and the financial affairs of their business?

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Mr. O'Brien: I object to that.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Yes.

Q. In that connection have you given consideration to the question of what provision should be made as a practical business matter for working capital?

A. Yes.

Mr. O'Brien: My objection will go to all this line of questions.

Q. Referring to the testimony of witnesses called by the defendants in this case, would you say that in the calculation of working capital the amount of accounts receivable should or should not be deducted from the amount of working capital? My question refers to a corporation such as the Consolidated Gas Company.

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Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and not rebuttal.

The Master: I will take it.

Mr. O'Brien: On the further ground, and in addition to the grounds stated by Mr. Chambers, that the witness is not qualified.

Mr. Ransom: May I say this in that connection, that while the witness Weber was on the stand, or Sangster was on the stand, in behalf of the defendants, and objections were made to their testifying on the subject of working capital, your Honor's attention was called to the fact that on our direct case you had declined to take the opinion of Mr. Teele on certain aspects of working capital. Then your Honor said that you would permit us to call Mr. Teele on that question.

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The Master: Well, I am frank to say that I do not recall that incident. I do recall this, that when the defendants were seeking to qualify a

witness on the question of working capital you made the objection that they could not be considered more than an accountant, or words to that effect, and I said to you, either on the record or off the record, that in my judgment an accountant like Mr. Teele was as qualified as anybody else to talk about working capital.

Mr. Ransom: If I may remind you, that was the other evening in the other room when Prof. Bemis was being interrogated; but when Mr. Sangster was being interrogated by Mr. Geetz—

The Master: I have allowed this question because you did not present as any part of your case, nor was it brought out by cross in a manner that —well, it was not part of your case to prove a negative, namely, that accounts payable should not be deducted. The defendants have attempted to prove affirmatively that accounts payable should be deducted, and it is on that theory that I am allowing rebuttal. I will not allow you now to ask Mr. Teele what in his opinion should be set up as working capital, because I think you should have done that in your direct case, but I am allowing this question so Mr. Teele may rebut the direct testimony given by the defendants that accounts payable should be deducted.

Mr. Ransom: Perhaps your Honor would modify that ruling if I call your attention to the points in Mr. Teele's direct-examination in August, or early September—

The Master: I may, if you show it to me. I do not recall it. This question is allowed for the reason stated.

Mr. O'Brien: Exception.

The Master: Mr. Teele, is it your opinion that accounts payable should be deducted in arriving at working capital?

The Witness: If the question is the determination of working capital employed, then neither accounts payable, nor any other liability, should be deducted from the assets. I can conceive of no situation where they would be deducted unless in setting down the amount of cash required to be used as working capital there was included in that cash an amount sufficient to discharge the liabilities. In that case the current liabilities might be deducted, but if the working capital employed in any business venture is being considered, and not the working capital to be contributed, then 42782
the liabilities have no part in the determination whatsoever.

Q. In other words, if you deduct the amount of these accounts payable you would have to provide an increased amount of cash?

A. In order to justify a deduction of the liabilities the cash requirements would be increased.

Mr. Chambers: I object to that.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. So the net effect would be the same?

A. Yes.

Mr. Ransom: The defendants may cross-examine. 42783

The Master: Well, I imagine I have got to give them some little time to look at these schedules.

Mr. O'Brien: I suggest that you do it right after you get back from Cuba.

The Master: You will do it between now and Monday morning, have Mr. Sangster check up between now and Monday morning.

Mr. Clark: He is not here.

The Master: Then get him. These complainants are not to be penalized because Mr. Sangster is in Chicago or somewhere else. Mr. Teele, you are excused until Monday morning at 9:30.

Mr. O'Brien: I take an exception to your Honor's ruling as to the time.

Mr. Chambers: I take an exception also.

Mr. Ransom: I want to ask Mr. Teele one or two questions on another matter.

Q. Mr. Teele, could a summary statement of revenues and expenses of the Consolidated Gas Com-
42785 pany, say for the year 1918, or of the Astoria Company for that year or any other year, be made up following the classification of accounts prescribed by the Public Service Commission, without setting up a set of books and accounts similar to those kept by the Consolidated Gas Company, for example, during that year?

Mr. Chambers: I object to that as being argumentative, and not rebuttal, and incompetent, irrelevant and immaterial.

The Master: I don't see any purpose in that question.

Q. In other words, in order to make up a summary
42786 statement of revenues and expenses such as you have put in evidence it would be necessary either to use the existing set of accounts or to build up a similar set from the original vouchers and records?

Mr. O'Brien: I object to that as not rebuttal.

The Master: I don't see the point of the question. Let me have it.

Mr. Ransom: Well, it is in relation to a claim that has been made, especially by Mr. Hayward, and somewhat less forcefully by Mr. Sangster, which has been relied upon by Mr. Hayward and also somewhat by Mr. Sangster, that summaries

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should be made up, not from books, but from the original vouchers and records. I am asking this as bearing on that.

The Master: I still don't get it, I confess.

Mr. O'Brien: It is not rebuttal.

The Master: I don't know what it is, I don't get the point of the question.

Mr. Ransom: I will withdraw it at this time.

Adjourned to Friday, February 27, 1920, at 9:30 A. M.

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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 42793

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, February 27, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 42794
MR. O'BRIEN, of Counsel for defendant Swann.

H. WARREN TERRY, JR., resumed the stand:

The Master: Mr. Terry is called for cross-examination.

Mr. Clark: I proceed with the cross-examination under protest. I am not entirely prepared. I consider that I should be given further time, in view of the fact that Mr. Birdsley, our only expert in these matters, has not had a chance to check up entirely the matter which has been presented by Mr. Terry, and I feel that the Master has allowed himself—with all due respect—to have his judgment on what justice demands somewhat warped by his desire to get away next week. 42795

The Master: No, I have not done anything of the sort, Mr. Clark.

Mr. Clark: I am just as anxious as anybody to finish this case.

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The Master: The question of my going away has nothing to do with this at all, because if the case is not finished by the time I go away it will simply have to wait until I get back. I am disposing of these matters as they appear, without regard to whether the case is finished by the time I go or not.

I directed the cross-examination of Mr. Terry to proceed this morning, and I now repeat that direction because I do not see any necessity for a long preparation. The cross-examination of Mr. Terry cannot, in the nature of things, mean very
42707 much; all he has testified to is that he made some computations, copies of which he gave you some days ago. So far as Mr. Birdsley has gone, if you have found that Mr. Terry has operated on some line contrary to proper procedure, or if you have found that he has adopted a practice that is wrong, you can bring it out in a very few questions.

Mr. Clark: It is not a question of the practice being wrong. He represents our computations are incorrect and makes his own computations.

The Master: Yes.

Mr. Clark: Until the time I have checked up
42708 and see if his computations are correct, I cannot proceed.

The Master: What have you done so far?

Mr. Clark: I have discovered some errors.

The Master: Point them out. That affects his testimony to some extent, and then when you are through with your computations, if it will probably be on Monday, it will be postponed until then, and you can bring Mr. Birdsley on to prove what you want.

Mr. Ransom: If the 510 City computation-

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are correct, your Honor said the other day that could be shown in sur-rebuttal.

Mr. Clark: That is not the point.

The Master: You misconceive the purpose of the cross.

Mr. Clark: On cross-examination it is our purpose to show Mr. Terry's computations are incorrect.

The Master: But if you take two or three you show it just as well as you could by three hundred, especially if you call Mr. Birdsley and have him show he has recomputed these things and find a result different from Mr. Terry. In 42800
other words, if you take three items and you demonstrate by the testimony of Mr. Terry here on the stand that he is wrong, I have a right to assume that he is wrong in others that he has pointed out.

Mr. Ransom: I think your Honor has misapprehended that situation a little. This is not a question of whether Mr. Terry has correctly computed the things which he puts in Column 7; the question here is whether the City has computed correctly the figures which are in Column 6.

The Master: What is the difference?

Mr. Ransom: I am perfectly willing to admit 42801
on this record that you can take eight men on this City method and get eight different results

Mr. Clark: That is not correct at all.

The Master: But I say, whether the statement is made in the form I make it, or whether it is made in the form Judge Ransom makes it, the result is the same: the question is whether the inspectors reported a correct result based on those tables.

Mr. Ransom: That is the question.

42802 H. Warren Terry, Jr., Cross.

Mr. Clark: The question goes to Mr. Terry's ability to compute them.

The Master: All right, cross examine him as to that. You can do that just as well by cross examining him on a few as you could on 540 sheets.

Mr. Clark: I note an exception.

The Master: I could cross-examine him. It is perfectly easy.

CROSS-EXAMINATION BY MR. CLARK.

Q. Mr. Terry, how long have you been engaged in
42803 testing gas?

A. Eighteen years.

Q. Have you tested gas at 79th Street station of the Consolidated Company?

Mr. Ransom: Objected to as immaterial.

The Master: No, I will allow it.

Mr. Ransom: Exception.

A. I have tested it.

Q. What apparatus do they use in the 79th Street station of the company?

Mr. Ransom: Objected to as immaterial and not cross-examination.

The Master: I think it is.

42804 Mr. Ransom: Why, he has not testified to any apparatus at all; he has simply testified to and given his computations.

Mr. Clark: He has testified that he tested gas, has he not?

Mr. Ransom: He has not testified to any tests of gas.

The Master: I think it bears on his ability to make the computations.

Mr. Ransom: What kind of apparatus they used at 79th Street?

The Master: Yes.

Mr. Clark: If the duty of the gas tester is simply to compute, then why don't you do it yourself?

Mr. Ransom: He has not said that he was anything of the sort.

Q. What sort of apparatus do you use at 79th Street, Mr. Terry?

Mr. Ransom: Objected to as not cross-examination.

The Master: I will sustain that as not material.

Mr. Clark: I except to your Honor's ruling. 42806
Might I ask the reason for it?

The Master: I say I do not think it is material what apparatus they use. Mr. Terry has been called here as a man able to take the recorded observations on a sheet of paper and figure the result.

Mr. Ransom: Using certain tables.

The Master: Using certain tables. You can ask him any questions which will bear upon his ability to do that work.

Mr. Clark: I have not had a chance to look over the testimony, but my recollection is Mr. Terry was qualified as a gas inspector and gas 42807
engineer, and on everything that pertains to gas.

Mr. Ransom: No.

The Master: He said he had computed it.

Mr. Ransom: I did not even ask him that.

Mr. Clark: I think he testified what his education was and what he had done.

The Master: Yes.

Mr. Ransom: I showed that he had a college degree in engineering for the purpose of show-

ing a *prima facie* presumption that he could do this work he has done.

The Master: And you also asked what position he held with the Gas Company.

Mr. Ransom: Yes, and how long he had been there.

The Master: I will sustain the objection.

Mr. Clark: I think if they produce a man who computed these things, it is necessary to show his qualifications to do it.

The Master: It does not make any difference
42809 what apparatus was used in testing the gas, though.

Q. Can you state what apparatus is used by the Consolidated Gas Company for testing gas?

Mr. Ransom: Objected to as immaterial and not proper cross-examination.

The Master: Sustained.

Mr. Chambers: They asked our witnesses these very questions, these men who came in here to compute, to describe some apparatus on a piece of paper.

The Master: Objection sustained.

Mr. Ransom: This witness has not testified to
42810 any Consolidated tests.

Mr. Chambers: As a matter of fact, he used the same system that we do.

Mr. Ransom: Not at all.

Mr. Clark: I understand your Honor's ruling is I can ask no questions as to his qualifications as a gas expert or gas tester?

The Master: I would rather not answer it that way, because some of the questions you have in mind might bear upon his ability to compute. You better ask your questions and I will rule on your questions.

Q. How is gas tested, Mr. Terry?

Mr. Ransom: Objected to as immaterial and not proper cross-examination.

The Master: Sustained.

Q. What effect does the rate of burning of a candle have upon the observed candle power?

Mr. Ransom: Objected to as immaterial, not cross-examination.

The Master: Sustained.

Q. What corrections should be made of the observed candle power to obtain the correct candle power? 42812

Mr. Ransom: Objected to.

The Master: Sustained.

Mr. Chambers: Exception.

Mr. Clark: Exception to all your Honor's rulings.

Q. Does temperature affect the candle power, the observed candle power of gas?

Mr. Ransom: Objected to as not cross-examination.

The Master: Sustained.

Mr. Clark: Exception.

The Master: It is a very simple line of proof this witness was called for. 42813

Q. Have you ever used logarithmic tables, such as have been put in evidence here, for the computation of corrected candle power?

A. I have.

Q. Where have you used them?

Mr. Ransom: Objected to as immaterial.

The Master: Allowed.

Mr. Ransom: Exception.

A. I used them at testing stations, at 79th Street and Grand Street.

Q. That is the Consolidated Gas Company test stations?

A. The Consolidated Gas Company test stations.

Q. Where is this testing station of the Consolidated Gas Company?

Mr. Ransom: Objected to as immaterial, not proper cross-examination.

The Master: Overruled.

Mr. Ransom: Exception.

A. Pardon me?

Q. Where is it with relation to the City's testing

42815 station?

A. Oh, on 79th Street. We are on the top floor of the building, the fifth floor of the building.

Q. And the City's testing station is where?

A. On the third.

Q. Do you test gas from the same pipes as the City's tests?

Mr. Ransom: Objected to as not cross-examination.

The Master: Sustained.

Mr. Clark: Exception.

Q. Are the logarithmic tables which you use exactly the same as those used by the City?

42816 A. They are not.

Q. What is the difference?

A. In the fourth decimal place of the City's tables I found they were not as correct as the other tables.

Mr. Chambers: I object and move to strike that out. He asked him the difference.

Mr. Ransom: That is the difference.

Mr. Chambers: No, now, he asked him the difference.

The Master: I know what he asked him and I know what he said.

Mr. Chambers: I move to strike it out.

The Master: Motion granted, except so far as the witness said that they are not the same, he found a difference in the fourth decimal place.

Mr. Ransom: Exception.

Q. Is the fourth decimal place universally different?

Mr. Ransom: Objected to as immaterial and incompetent, not cross-examination.

The Master: I will sustain that objection.

Mr. O'Brien: The City used Dr. Love's tables.

The Master: No, I will overrule that objection. It might bear on his ability to use the 42818
logarithmic tables. I will allow it.

Mr. Ransom: Exception.

Q. Do they universally differ?

A. No.

Q. Do they occasionally?

A. Yes.

Q. In how many instances?

Mr. Ransom: Objected to.

The Master: The question is allowed.

Mr. Ransom: Exception.

A. Five or six. I do not remember offhand. I checked up the differences and made no note of them.

By the Master: 42819

Q. Do you mean by logarithmic tables the candle power, the temperature and barometric pressure tables referred to here?

A. Yes.

Q. Or do you mean that little book of logarithms?

A. The tables submitted by the City.

Q. Those little card tables?

A. These little card tables (indicating).

Q. You mean the temperature and barometer tables?

A. Yes.

The Master: I talk of them as distinguished from the logarithmic book tables.

By Mr. Clark:

Q. The common logarithms are the same, are they not? You use the same common logarithms as the City?

A. Except as I found those differences.

Q. No, I mean the common logarithms.

A. Yes.

Q. They are the same?

A. I don't quite understand.

42821 Q. The common logarithms are the same as the City uses—I mean for the computation of the final—

A. The computation, that is where I found most differences, in the common logarithms.

Q. In that little book submitted here?

A. No, those submitted by the City—these sheets (indicating). Most of the differences were in this sheet.

The Master: The witness refers to the tables of candle power, candle burning, temperature and barometric pressure corrections.

The Witness: I recall this is one (indicating).

42822 Mr. Ransom: That is the table headed "Logarithmic Tables for Calculating the Temperature of Gas and the Usual Photometric Observations."

The Witness: Yes.

The Master: This little book Mr. Birdsley has what is that called?

Mr. Clark: Pocket logarithms—

The Master: Well, I am asking the witness.

By the Master:

Q. What kind of a table or book is that?

A. Pocket logarithms—that is all I can make out on the cover. The rest is—

Q. That is all I could ever make out of it, but that is a book of common logarithmic calculations, isn't it?

A. Yes.

Q. Do you use that book?

A. No, we only use one more accurate.

Q. You mean a table carried out further?

A. Carried out further.

Q. Is this a book in common use?

Mr. Ransom: Objected to as immaterial.

The Master: I will ask him that.

Mr. Ransom: Exception. 42824

A. I could not say.

Q. It is not carried out to the extent that your logarithms are carried out, is it?

A. No.

Q. So that the answer, really, to Mr. Clark's statement, is that you do not use that book?

A. No, I do not.

Q. In your calculations?

A. I do not.

Q. You use a calculation that carries the points further out?

A. Yes.

Mr. Chambers: How far out? 42825

The Witness: The book we check our tables with is carried seven places, and we use a four place table in our work.

By Mr. Clark:

Q. This is a four-place table, isn't it?

A. Yes, but we checked ours with a seven place table.

Mr. Chambers: I do not understand that.

Q. You made corrections in the fifth and sixth, and you changed the fourth place?

A. Changed the fourth place. If it was more than half it would add.

Q. You use a four place table?

A. Yes.

By the Master:

Q. How many years have you been handling these figures?

A. Of this type?

Q. No, figures of that general description.

A. For the past twenty-two years.

Q. How many calculations have you made, mill-

42827 ions?

A. Well, it ran up in the thousands anyhow.

By Mr. Clark:

Q. Who inaugurated the system of gas testing that the Consolidated Gas Company uses?

Mr. Ransom: Objected to as immaterial and not proper cross-examination.

The Master: Objection sustained.

Mr. Clark: Exception.

The Master: I will let you examine the witness as to his ability to make these calculations, that is all.

Q. Who set down or established the tables which

42828 you used, if you know?

Mr. Ransom: Objected to as incompetent and not proper cross-examination.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: He did not use these tables in making the calculations, I understand; he used your tables.

Mr. Clark: Yes, I understand that, but I have asked him what tables they use.

The Master: It is not cross-examination. If they do not want to show what tables they use, then I won't take any evidence on it from you. It is up to them to show what they used, a certain set of tables, and if they do not want to show it I won't take it from you. I have a right, then, to assume yours are right.

Q. Mr. Terry, at the Grand Street station of the Consolidated do you use tables similar to those which the defendants use, which the City uses?

Mr. Ransom: Objected to as incompetent, not cross-examination. 42830

The Master: Sustained.

Mr. Clark: Exception.

Q. Have you ever made tests at the Grand Street station of the Consolidated?

Mr. Ransom: Objected to.

A. I have.

The Master: Well, he has answered it.

Q. You have computed tests there?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it. It has a bearing on his ability to compute.

A. I have.

Q. What tables did you use for these computations? 42831

Mr. Ransom: Objected to.

The Master: Overruled.

Mr. Ransom: Exception.

A. Logarithmic tables.

Q. Were they exactly the same as those which you testified you used at 79th Street?

A. Yes.

Q. Where is the testing station of the Consolidated at Grand Street, as compared to the City testing station?

42832 H. Warren Terry, Jr., Cross.

A. On the floor below.

Q. Do you take gas from the same mains?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Clark: Exception.

Q. Are not the logarithmic tables carried to the fourth place considered accurate for this kind of work?

Mr. Ransom: I doubt whether that is—

The Master: I will allow it as bearing possibly upon his ability to do this.

42833 A. It would depend upon how accurate you want your work. If you want your work accurate you have got to carry it further. If you want very accurate scientific work you have got to carry it beyond four places.

Q. What is the common use of logarithmic tables?

Mr. Ransom: Objected to as indefinite.

Mr. Clark: As to the number of places to which they are carried out.

Mr. Ransom: Do you mean in the gas industry or in the cheese industry, or what?

The Master: I will allow it—referring to gas testing.

42834 A. For gas work?

Q. For gas work, yes.

A. For ordinary work four places would be sufficient.

Q. What is the scope of your duties with the Consolidated Gas Company, merely to make these tests?

A. No.

Q. What do your duties consist of?

A. I am in charge of the chemical department at present.

Q. You make all chemical tests for the company?

A. I make all chemical tests for the company, yes.

Q. And you have entire charge and supervision of the illuminating tests?

A. Only so far as the test stations are concerned.

Q. Not at the works?

A. No.

Q. Who does have charge of the tests at the works?

Mr. Ransom: Objected to as immaterial and not cross-examination.

The Master: Overruled.

Mr. Ransom: It has been previously testified that Mr. Woods was in charge of the superin- 42836
tendents at the works.

The Master: I will take his answer. Who has charge of the testing station at the works?

A. The superintendents.

Q. And they are not further checked by the company? I mean there is no further supervision by the company over the testing at the works?

Mr. Ransom: Objected to as immaterial.

Mr. Clark: I mean from the central office, is there any supervision from the central office over the tests made at the works?

A. No, except the superintendent would ask for a check, just to satisfy himself that his work is right. 42837

Q. Do you prescribe the methods, etc., for testing at the works?

A. I do not.

Q. You do not know what those methods are?

Mr. Ransom: Objected to as immaterial.

The Master: Overruled.

Mr. Ransom: Exception.

A. I do know what the methods are.

Q. But you have never been asked officially to prove them or otherwise act upon them?

A. No.

Mr. Ransom: Objected to as incompetent.

Q. Where are your headquarters, the 15th Street building?

A. The 15th Street building.

Q. And your chemical laboratories are where?

A. Astoria.

Q. At Astoria?

A. Yes, sir.

Q. How often do you visit the testing stations of the company?

42839 Mr. Ransom: Objected to as immaterial.

The Master: I will allow it as possibly bearing upon competency.

Mr. Ransom: It has nothing to do with these computations.

The Master: It may have as to his ability to compute them.

A. Up until last September I covered our testing stations probably every two weeks; since then I have not made such frequent visits.

Q. Up to what time, did you say?

A. Up to September, last September.

Q. Of 1919?

42840 A. 1919.

Q. Can you state, Mr. Terry, whether there would be any difference in the use of these tables, or in the accuracy of the results, if two candles, burning at the rate of 120 grains per hour, were used instead of one?

Mr. Ransom: I think I shall object to that as not cross-examination.

The Master: I think I shall overrule it, if that is the way you put the objection.

Mr. Ransom: Well, I will put it more—

The Master: No, I will overrule the objection.

Mr. Ransom: Exception.

A. You ask me that question?

Q. I ask you that.

Mr. Ransom: I object to it as vague and general, opening up a matter not within the scope of the cross-examination of the witness.

The Master: I will take the witness's answer.

Mr. Ransom: Exception.

A. Two candles are ordinarily used on account of the variation. One candle is apt to vary up and down in the flame, and also on a bar one candle gives very faint illumination.

By the Master: 42842

Q. You have not answered the question, though, Mr. Terry. Does it make any difference in the result whether you have one candle or two?

A. It would to to that extent, whether you could read it, read the amount of illumination on the disc.

Q. In other words, one candle will not give as satisfactory a test as two?

A. No.

Q. In your judgment?

A. In my judgment.

Mr. Clark: The statute requires 22 candles.

Q. Will 22 candles give us a better test than two?

A. On a 100 inch bar, not on a 60 inch bar. 42843

Q. But it is perfectly feasible to test gas of 22 candles on that bar?

A. Yes, but it should be on a 100 inch bar.

Q. That would be the most accurate way of doing it?

A. Yes.

Q. That would be the best way to find out what the illuminating power of the 22 candles is?

A. Yes.

Q. And how many grains to the hour is burned?

A. Yes.

42844 H. Warren Terry, Jr., Cross.

Q. Six candles to the pound?

A. Six candles to the pound, yes.

Q. In other words, if you take six candles to the pound, use 20 of them, use a 100 inch bar, you will get the exact result of what 22 candles will show, the illuminating power of 22 candles?

A. Yes, you would have practically equal illumination, have your bar in near the middle of the scale, and you could check it closer.

Q. I mean, leaving out this apparatus and all these computations, if you take the 100 inch bar and you
42845 take 22 candles, six to the pound, you will find out exactly what the illuminating power of those 22 candles is; is that so?

A. Yes.

Q. And anything else is a computation?

A. Yes.

By Mr. Clark:

Q. Did you ever see an instrument which was provided for the use of 22 candles

A. No.

The Master: Why don't you get one, Mr. Clark if the statute says that you should have one?

42846 Mr. Chambers: No, it does not state any such thing.

The Master: I am taking Mr. Clark's statement on that.

Mr. Ransom: The Commission has charge of this candle power and I will take the statement of counsel to the Commission.

Mr. Chambers: No, you will not. The statute merely requires it shall have illuminating power equivalent to 22.

Mr. Ransom: The Attorney General has not charge of that matter.

Q. The common method of testing gas is by the use of two candles?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

A. Yes, in New York City.

Q. And that is what you have used in the Consolidated Gas Company?

A. Where we are required to—I will get that straight, where we are checking somebody else who is using candles.

Q. What do you use at the works?

Mr. Ransom: Objected to. 42848

The Master: I won't go any further into it.

Mr. Clark: He says when he is checking somebody. He is not checking anybody at the works.

The Master: I am not going any further into it; it does not make any difference what the Gas Company does, except as already testified.

Mr. Ransom: I will admit on this record that where we are checking the City on the gas which we are selling to the City as a consumer, we use the apparatus specified in the contract with the City, and which approximates in certain respects and differs in certain other respects with the apparatus which has been testified to by Mr. Birdsley and Mr. Hirschewitz and the others in this 42849 case.

Mr. Clark: In view of Mr. Ransom's statement, I ask permission to bring out from the witness what differences there are between the two systems.

The Master: I do not care; I am not going into that.

Mr. Clark: Mr. Ransom spread on the record the difference.

The Master: The complainant has not undertaken to prove that your method of testing is inaccurate from the standpoint of the basis used, except so far as it was brought out from this witness that your tables are somewhat wrong.

Mr. Clark: I except to the Master's statement.

The Master: Except for the human element that enters into it.

Mr. Clark: Not that the tables are wrong. I except to that.

Mr. Chambers: He merely said that they
42851 carried the decimals out further. That is not wrong.

The Master: I am not going into the question of how the Gas Company makes a test.

Mr. Clark: He has made a statement here of how they check the City's tests.

The Master: I do not care.

Mr. Clark: Are we not entitled to attack the statements that he makes?

The Master: No, you are not entitled to attack anything that you bring out on cross.

Mr. Clark: I except to your Honor's ruling.

Q. Mr. Terry, taking the test sheet for December
42852 8, 1919, from the figures given there, would you calculate that and see what results you come to (handing witness)?

Mr. Ransom: Is that the test Branch 3, 79th Street?

The Witness: Branch 3, 79th Street, December 8, 11 A. M.

A. Do you want the answer or the logarithms?

Q. The answer.

A. 18.89.

Q. Is that the corrected candle power? What logarithms do you get?

A. .9788 and .9957.

Q. What is the time of sperm, Mr. Terry?

A. Time of sperm is .9788.

Q. Your result is what?

A. My result is 18.89.

Q. And here it shows on your exhibit 20.88, does it not?

A. Yes.

Q. Will you calculate this New Amsterdam, June 10th, 1919 (showing witness).

A. (After calculation) 20.83.

Q. And on this table you have shown 20.82? 42854

A. Yes.

Q. Will you compute this one, New Amsterdam, September 29th, 1919 (handing witness)?

A. (After calculation) 20.38.

Mr. Vilas: That is the same amount that you report, is it not?

Mr. Clark: That is the same, yes. I will concede that is the same.

The Master: What did the inspector report on that?

The Witness: 20.33.

Q. Mr. Terry, how long have you been working on these exhibits? 42855

A. These?

Q. Yes.

A. Since Wednesday, last Wednesday. A week ago Wednesday.

Q. A week ago Wednesday?

A. Yes.

Q. How long per day have you worked on them?

A. From 9 until midnight.

Q. Every day?

A. Except Sunday.

42856 H. Warren Terry, Jr., Cross.

Q. And you have had how many men to help you?

A. Part of the time—we started with two and I have five now.

Q. And you have calculated a great many more test sheets than the 510 that you have here?

A. Personally I have only calculated a few more.

Q. Well, you have had calculated under you?

A. Oh, yes.

Q. You have had access to all of these exhibits put in?

A. Yes. That is the four years exhibit?

42857 Q. Yes.

A. Yes.

Q. And what was your instructions?

Mr. Vilas: I object to that.

The Master: Overruled.

Mr. Vilas: Exception.

A. Examine all of them, to see if they were correct.

Q. To check all of them?

A. To check all of them.

By the Master:

Q. And your men are still working?

A. Still working, yes.

42858 The Master: On the first exhibit, December 8, 1919, the witness calculated 18.89, the inspector's report is 20.68; on the second one the witness figured 20.83 and the inspector 20.96, and on the third one the witness figured 20.38 and the inspector 20.33.

Mr. Clark: His figure on that first one is—

The Master: I remember that; that is on the record.

Mr. Clark: I offer in evidence the calculations that he made on those.

Mr. Vilas: I object to that.

The Master: I think it is on the record.

Mr. Vilas: It is not in evidence or anything. The results of his calculations are here.

The Master: I will take it.

Mr. Chambers: You can spread those sheets right in the minutes there.

Mr. Clark: He must have taken the wrong one one time or the other, when he differs from himself.

The Master: What do I understand, Mr. Terry, that you now found why you have 18.89? 42860

The Witness: No, I have not my original calculations here I took this data here.

The Master: In other words, you are pointing out that the inspector added up his observations written on December 8, 1910?

The Witness: Yes, and here is my addition.

The Master: I do not see any percentage in putting these calculations in. They are meaningless in the record.

Mr. Chambers: There is only this about it: he said that he differed with the inspectors in some instances, and now it turns out—

The Master: I will not take it. 42861

Mr. Ransom: He has not shown where the inspector's were right.

The Master: But he shows, too, where he does not agree with himself.

Mr. Ransom: That is perfectly possible. I admit that if Mr. Birdsley computes these under this method the result will be what the witness got, differing results.

Mr. Clark: He will not.

Mr. Ransom: If there is any one table of these

42862 Walter R. Addicks, Direct

510 which has been correctly computed by the man I would like to hear of it.

Mr. O'Brien: Under your ruling made last night, I assume Mr. Ransom's last speech will be eliminated from this record.

The Master: Yes, I should have started that rule earlier in the day. There won't be any more of it on the record.

Q. When tests are made at 79th Street what record is made of them?

Mr. Ransom: Objected to as incompetent, not
42863 cross.

The Master: Sustained.

Mr. Clark: Exception.

Q. Is a copy of the test made at 79th Street by the company, put in the manufacturing book for the stations?

Mr. Ransom: Objected to as not cross-examination of this witness.

The Master: Objection sustained.

Mr. Clark: Exception. That is all.

Mr. Ransom: That is all, Mr. Terry.

(Witness excused.)

42864

WALTER R. ADDICKS, recalled by the complainant in rebuttal:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Addicks, have you examined Defendants' Exhibit AA-407 which was also marked and referred to by the defendants as Table 300, which purported to set forth the contract dates and prices for gas oil contracted for by Gas Companies within the City of New York?

A. Yes, sir.

Q. Did you find that that statement included all of the oil contracts which had been put in evidence in this case, both by the defendants and by the complainant, yes or no? Did you find that it did include all of them or not?

Mr. O'Brien: Why should you say yes or no to him?

A. I cannot quite answer that yes or no. It did include them, but yet it stated they were not all there.

Q. You are referring now to two Brooklyn Borough— 42866

Mr. Chambers: I move to strike that out as characterizing one of our exhibits.

The Master: There is some fact here that Mr. Addicks is called to prove, and it ought to be brought out somehow. Let us get the fact.

Mr. Ransom: I will get it.

Mr. O'Brien: I do not think Mr. Ransom ought to tell him to say yes or no. If he is here on the stand, let him go on without any coaching.

The Master: Let us get the fact.

Q. Table 300, Exhibit AA-407, that does not show any of the contracts put in evidence by either the 42867 defendants or complainant since October of 1915?

Mr. Chambers: I object as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Exception.

A. No, sir; it does not show the remainder of the contracts.

Q. You indicated a moment ago that you found certain prices shown on this table, for such the contracts as were not put in evidence.

A. No, the table shows the prices and in the reference you will find that he states in one case that it is not in evidence, that the contract is not in evidence

Q. Have you prepared tables showing the contract dates?

The Master: Why does any table show something that is not in evidence here?

Mr. Ransom: There was some reference to it in the testimony, and they put it in—

The Witness: No, that is not the fact. Pardon me, may I correct that?

42869 Mr. Chambers: Just a minute. I object to Mr. Addicks characterizing one of our exhibits. It is incompetent.

The Master: But I am going to ask him to do it.

Mr. Chambers: Exception.

The Witness: The reference to the table says that that particular contract is not in evidence. It is not in evidence, but—

The Master: Which one is it you mean?

The Witness: It is what corresponds to our Exhibit 57. Contract for 2,000,000 gallons of oil, 28 to 34 gravity.

42870 Q. What company?

A. I do not think the note specifies the company.

The Master: 28 to 34, 2,000,000 gallons; here it is as item 54 on Table 300. It contains the statement, "This contract abrogates deliveries due on Contract 6114, which contract was not produced."

The Witness: As a matter of fact, it is Defendants' Exhibit AA-88 and it was produced That is simply correcting the statement in your own table. You did produce the contract.

Mr. Chambers: I do not know, but I object to it.

The Master: Just on general principles?

Mr. Chambers: But I do not know whether it is produced or not. There is no figure on that table for which a contract is not in evidence, that I know of.

The Master: This Table 300 likewise shows he testifies that no contracts dated after October 1, 1915, are referred to. That is Exhibit AA-407. What is your next question?

42872 Q. Have you prepared tables showing the contract dates and prices for gas oil, under all of the contracts made by gas companies within the City of New York, from 1904 to 1920, inclusive, which were put in evidence in this case?

A. I think before answering that question I ought to make a further answer to the one that was asked me a moment ago. In our Item 21, I think that price that we disclosed was not in a contract, but in testimony, in one other case in Mr. Hine's table—one or two cases where it was in the testimony and not in the contract.

Q. Did you make up such a table of contracts?

42873 A. Yes, sir.

Q. Did you include in this table the price shown by the contract of October 5, 1906, made by the Kings County Lighting Company, the contract made by the Brooklyn Union Company of March, 1908, and by the Queensboro Gas & Electric Company, 1906, which were not placed in evidence in this case, but which were included in Defendants' Exhibit AA-407?

Mr. Chambers: I object to that. That is not the fact at all, as I understand it.

The Master: Objection overruled.

Mr. Chambers: It is incompetent, irrelevant and immaterial and our table speaks for itself.

Mr. O'Brien: Let me ask you, Judge Ransom, you are going to offer a table that covers the testimony down to date; is that the idea?

Mr. Ransom: I am, yes, sir. I want to make it clear that we have included, in view of what the witness has said—that we have included three contracts.

The Master: All contracts which were in evidence.

42875 Mr. Ransom: All contracts which were in evidence.

The Master: And also the three items referred to in the testimony.

Mr. Ransom: Which are in the defendants', Exhibit AA-407, although the contracts are not in evidence in the case.

The Master: But they are included in Exhibit AA-407.

Mr. Ransom: And also are included here. Is that the fact, Mr. Addicks?

Mr. Chambers: Exception.

The Witness: I know such is the fact with
42876 reference to certain contracts, but I would have to check those specific ones on my table to answer yes to those numbers.

By the Master:

Q. We will take the answer as contemplating the fact that you have included in your table all the contracts in evidence and the prices testified to on several contracts not offered in evidence?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

12877

Q. But you have not included any contracts that were not testified to or were not in evidence?

A. No, sir.

By Mr. Ransom:

Q. And down to 1916 you have not included any contracts or prices that are not included in Exhibit AA-407?

The Master: 1915, I guess, isn't it? October 1, 1915.

Mr. Ransom: Down to the end of 1915.

A. Yes, I think there is one.

Q. Which one is that? 12878

A. The one of October 17, 1916.

Q. What company?

A. Between the Texas Company and the Kings County.

The Master: Which was omitted from Exhibit AA-407?

The Witness: Apparently; yes, sir.

Q. Can you give the exhibit number on that?

A. The exhibit number?

Q. Of the contract?

A. No, I have not got that note here, but if you will permit me to refer to the other notes, it is amongst the exhibits. May I do that? 12879

The Master: Yes. Who offered in evidence contracts of purchase in December, 1919?

Mr. Ransom: I did.

The Master: You did?

Mr Ransom: Yes.

Mr. Chambers: Over my objection and exception.

The Master: That is all right, they offered them in their main case. What I was going to do, if I found you offered them I was going to let him offer his Consolidated contracts for the balance of the year. That is what made me ask.

Q. Mr. Addicks, you have not included on this table, gotten up by you, the contracts of the Consolidated Gas Company for supply of gas oil during 1920?

A. I have not.

Q. That has not been placed in evidence in this case?

A. No, sir.

Q. Have you that contract here?

A. I have.

Q. Will you produce it?

A. (Produces paper.)

42881 Q. This is the original?

A. Yes, sir.

Q. This is the original or one of the originals of the contract under which gas oil is to be supplied to the complainant company?

A. Yes, sir.

Q. During 1920?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, and not rebuttal.

The Master: That objection will be overruled, that particular objection.

Mr. O'Brien: Exception.

A. Yes, sir.

42882 Q. This is signed by you?

A. Yes, sir.

Q. It is signed by Mr. Asche, the vice president, in behalf of the Standard Oil Company of New Jersey?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Let me see it before I object.

The Master: No.

Mr. Ransom: I ask that that request of Mr. Chambers go on the record.

Mr. Chambers: I am going to object to it on the ground it is not rebuttal.

The Master: Then there is no necessity of your looking at it.

Mr. Chambers: I thought I was entitled to look at any paper that was offered.

Mr. Ransom: He is.

The Master: That was just what was in my mind. Generally speaking counsel are entitled to look at any exhibit when offered, but if you are going to object to it on the ground it is not rebuttal because it applies to 1920 contracts, I am not going to let you look at it.

Mr. Chambers: I object to it as incompetent, 42884
irrelevant, immaterial and not proper rebuttal.

Mr. O'Brien: Same objection.

Mr. Ransom: I call attention to two matters on the question of whether this is or not rebuttal. Mr. Little in his exhibit regarding coke ovens, or what he called a by-product coke oven plant, made a definite statement with respect to the price of gas oil for the future.

The Master: That was his case.

Mr. O'Brien: The Master had some testimony about that.

Mr. Ransom: It is true that he somewhat changed that on cross-examination. 42885

By the Master:

Q. Was this contract, Mr. Addicks, executed on or about its date?

A. Yes, sir.

Q. December 4, 1919?

A. Yes, sir.

The Master: I will not hear any further discussion, Judge Ransom. The record speaks for itself. Whatever Mr. Little said, either in his exhibit or his oral testimony, is there. I shall rule that that is not rebuttal, and further that this

contract having been executed on or about December 4, 1919, long before you closed your case at the end of December, it should have been offered at that time. I will not take it. I shall rule that it is not proper rebuttal.

Mr. Ransom: The statement to which I called attention is the statement on Sheet 7 of Section 4, of Mr. Little's exhibit on plant capacity and output, as follows: "I am unable to see why a price of more than six cents per gallon for gas oil should be permitted."

42887 The Master: That statement means nothing to me, it is a pure guess. Perhaps there are some other things that he can't see that I may be able to see.

Mr. Ransom: Your Honor sustains the objection?

The Master: Yes, on the ground it is not rebuttal.

Mr. Ransom: Do all these defendants object?

The Master: The witness modifies the statement made and says that the contract was actually executed before December 17th. In any event, it was before the defendants' case was closed.

42888 By Mr. Ransom:

Q. Now, this tabulation of all oil contracts down to the end of 1919 that was offered in evidence, so far as the companies within the City of New York are concerned, was prepared under your direction?

A. Yes, sir.

Q. And has been personally checked by you every contract in the case?

A. Yes, sir.

Q. And known to you to be correct?

A. With copies of the contracts.

Q. Copies furnished by the other side as to contracts put in evidence by the defendants?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

The Master: Is that your complete exhibit, or is it part of the other exhibits, the same sort of matter that there is on Table 300?

Mr. Ransom: That is part of the exhibit.

The Master: With corresponding notes, the same as on Table 300, Exhibit AA-407?

Mr. Ransom: Yes, sir.

The Master: Show it to the other side. 42890

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial. The bona fides of the contract not having been proven, and it having been shown that there was no competitive bidding, they went through the form of perfunctory letters. There is a community of interest between the Consolidated Gas Company and the Standard Oil Company which calls upon the complainant company to justify the prices paid, and all the details of the contract. Further, that they have not shown that the price paid by the Consolidated Gas Company is less, or even the same amount as the price paid by the Standard Oil Company of 42891
New York to the Standard Oil Company of New Jersey.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: As preliminary to my objection I would like to ask a few questions.

By Mr. Chambers:

Q. Mr. Addicks, have you included this paper which I now show you in your table?

The Master: Is it an exhibit?

Mr. Chambers: No, it is not in as an exhibit.

The Master: Then don't answer the question. His testimony relates to exhibits in evidence.

Mr. Chambers: I want to show that he included this which is not an exhibit. I want to show he got one in that is not an exhibit, I feel sure.

The Master: All right, I will let you show that.

Mr. Chambers: This was marked for identification and never was put in evidence.

Mr. Ransom: He said he used the same price
42893 that was on your Table 300?

Mr. Chambers: That is not in our Table 300, should not be.

Mr. Ransom: No, it is not in.

Q. What does "A" here mean?

A. That was copied from your exhibit, the contract in evidence.

The Master: What is the date of that?

The Witness: October 5, 1906, with the Gulf Refining Company.

Mr. Chambers: In fairness to him I want to say that he appears to have discovered that it was not in.

42894 The Master: The witness's "A" is precisely a copy of the "A" and the note on Table 300, Exhibit 407. It is apparently a copy of that. He copied this down to 1907, apparently.

The Witness: With one exception, and some additional ones.

The Master: You can't work it in and then say Mr. Addicks couldn't work it in.

Mr. Chambers: No, I was just finding if his table was what he represented it to be. I could not find the "A" there, but I see it now.

The Master: What are these "A's" in the first column that refers to the A, B and C?

The Witness: They show the companies supplying the oil.

The Master: In other words, you followed the same system as Table 300, Exhibit AA-407?

The Witness: Yes, in all respects. The reference numbers are slightly different.

Mr. Ransom: That is, the numbered footnotes?

The Witness: The numbers opposite the contract. 42896

The Master: The subject-matter is the same?

The Witness: The subject-matter is the same.

Mr. Chambers: I object to this as incompetent and irrelevant and immaterial.

Th Master: You join in Mr. O'Brien's objections? He has stated about all there is.

Mr. Chambers: Yes.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 487.

Mr. Ransom: May I have this contract dated December 4, 1919, which the witness has identified, marked for identification? 42897

The Master: Yes.

Paper marked Complainant's Exhibit 488 for identification.

By Mr. Ransom:

Q. Mr. Addicks, if gas of a candle power of 23.5 candles or more at the manufacturing station is exposed during its passage through the mains by reason of the by-passing of mains, to an outside temperature of 20 degrees or less, can you state what effect that would have, such exposure and passage

through by-pass mains, upon the candle power of gas?

Mr. Clark: I object to that.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal. The witness has not shown qualifications.

The Master: I will allow it.

Mr. Clark: Exception.

Mr. Chambers: Exception.

A. It would have the result of depreciating the
42809 candle power.

Q. In the first instance, would the temperature of the gas inside the by-pass mains be reduced?

Mr. Chambers: I make the same objection that it is incompetent, irrelevant and immaterial and not proper rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes.

Q. What effect does the reduction in the temperature of the gas have upon the gas?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper
42810 rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. It takes out some of the—or rather, some of the enriching material, the illuminants will drop from the gas.

Q. Do you mean the heavy hydrocarbons?

A. The heavy hydrocarbons.

Q. And watery vapors?

A. The watery vapors will also drop.

Q. Now, it is the heavy hydrocarbons that give luminosity to the flame?

A. The hydrocarbons which are known as illuminants, giving the candle power properties to the gas, would be affected.

Q. These things become liquid in the pipe at the point of exposure?

Mr. Chambers: I make the same objection. The witness is not qualified, he is not shown that he is a chemist.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes.

Q. Can you state from your experience the effect 42902
of this dropping out in candles, where the gas is thus subjected, by by-passing, to a lower temperature than 20 degrees?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and the witness has not said anything about dropping out of candles.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. I have had personal experience in attempting to supply gas with exposed mains.

Q. What is the effect?

A. The effect is to very materially lower the can- 42903
dle power.

Q. How many candles, where the temperature is lower than 20 degrees.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. There isn't any evidence that they ascertain the temperature of the gas.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. I cannot answer that question specifically on 20 degrees.

42904 Walter R. Addicks, Direct.

Q. Well, 20 degrees, or lower than 20 degrees.

A. During a period of winter weather the fact of having the exposed mains reduces very materially the candle power of the gas we send out.

Q. What do you mean by very materially? Supposing you have gas that is going through a by-pass main, and subjected to an outside temperature substantially less than 20 degrees, approximately how many candle powers would be the range of loss of candle power?

Mr. Chambers: I object to that as incompe-
42905 tent, irrelevant and immaterial and not proper rebuttal. He has said he could not tell, and he is not qualified.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. I can only answer that from the experience that I have referred to where the candle power probably lost 10 candles.

Mr. Chambers: I move to strike out the word "probably."

The Master: Motion denied.

Mr. Chambers: Exception.

Q. Assuming that gas has passed through a by-
42906 pass main, exposed main, and has been subjected to a temperature substantially below 20 degrees, and then later the gas passes into a warmer temperature such as would be found inside a building, so that when tested it becomes of a temperature approximating that of the building, will the gas be enabled thereby to regain its candle power?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, speculative, not proper rebuttal, and the witness is not shown that he is qualified to say.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. No, it would not recover candle power as a result of what you describe.

Q. Is there any way that you know of to transmit gas through exposed mains during the low temperature of winters in this climate without loss of candle power?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. The witness is not shown to be qualified, and also as not proper rebuttal.

The Master: Same ruling.

Mr. Chambers: Exception. 42908

A. No.

Q. Mr. Little testified as a witness for the defendants in this case, in substance, that gas from which the light oils had been stripped by the United States Government during the period of toluol extraction could still have been delivered to consumers by the complainant company at a candle power of 22, by the use of more gas oil? What have you to say as to the possibility during the period of toluol extraction of this company, of this company so enriching the gas with additional gas oil as to insure 22 candle power on the district?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, the witness is not shown that he is qualified. 42909

Mr. Clark: He is certainly not an operating man.

Mr. Chambers: It is argumentative and speculative.

The Master: Objection overruled

Mr. Chambers: Exception.

A. My judgment is that it could not be done.

The Master: Well, suppose you tell us a little more about why, explain it.

Q. Tell us why, first as to the Astoria and the New Amsterdam plants. What was the situation in this respect as to gas received by the Consolidated from those plants?

Mr. Clark: I object to that.

The Master: Objection overruled.

Mr. Clark: Exception.

A. Both the Astoria and the Ravenswood water gas plants enrich the coal gas made at Astoria, and there was practically no leeway in those plants to enrich any other deprecated gas.

42911 By the Master:

Q. I don't quite get that clearly in mind. Those companies made water gas at about 23 or 24 candle power, didn't they?

A. 28, 26 to 28 candle power.

Q. That was stripped by the Government.

A. Yes, they were all stripped by the Government.

Q. Now, after being stripped by the Government—before they were stripped by the Government, couldn't the amount of oil have been increased to increase the candle power?

A. Not beyond 28 candle power on the average.

42912 Q. Why not?

A. Because that is about all the machines will handle with the present oils, in making candle power.

By Mr. Ransom:

Q. In other words, in the first place, you could not make much higher candle power than 28 on these machines on the average?

A. On the average.

Q. With the present quality of oil, no matter what oil you used?

Mr. Chambers: I object to that as argumentative and incompetent.

The Master: I don't think that is altogether right. I think I would rather ask the question.

By the Master:

Q. Is it your contention that the water gas plants at Ravenswood and Astoria used as much oil as they could use?

A. No.

Q. What is the point about that?

Mr. Chambers: This is over my objection.

A. The use of more oil would not give a useful effect on candle power or make the gas that would carry any excess over 28. 42914

Q. Then they used all the oil they could to produce candle power?

A. They used the proper amount of oil to produce that candle power which is about the limit of the machines in the manufacture.

Mr. Chambers: I object to that on the ground that the witness doesn't know anything about it over there.

The Master: I will let you cross-examine.

Q. If more oil had been used would it have increased the candle power?

A. I think you might for a time get slightly higher than 28 candle power, but the machines would have to come down and be cleaned in order to continue that, so that for continuous operation 28 is about the limit. 42915

Q. It creates so much dirt and soot?

A. Yes, or residue in the machines, so that they have to be cleaned very often.

Q. If you had gotten a greater candle power would not the stripping process have gotten it down to where it was anyhow, or would it not?

Mr. Chambers: I make the same objection.

A. Yes, your Honor, but there is a certain point that has to be taken into consideration, that being enabled to make a certain candle power the stripping of that gas will depreciate that candle power to a certain proportion, whereas you take another gas of a lower candle power the stripping of that gas will be in about the same proportion, but the candle power at the end in the first case would be higher than it would be in the second case.

Mr. Chambers: I move to strike out the answer as being argumentative.

42917 The Master: If I understand it, it is favorable to you. Why do you want to strike it out?

Mr. Chambers: You didn't ask him about after the gas is made, whether that would be the same or not.

Mr. O'Brien: May I say a word at this point, having been out of the room on the telephone for the last few minutes, that it is all apart from the legal situation. The Government authorities never intended that consumers should bear the burden of wartime by taking impoverished gas.

The Master: This is in rebuttal of Mr. Little's testimony that it could have been done anyhow. Now, let us get this right.

42918 Q. As I understand it, Mr. Addicks—if I am not right, put me right about it—the higher the candle power, the greater the net candle power would be after the stripping process?

A. Right.

Q. In other words, assume that with the 28 candle power the stripping process brought it down to 20, if you could make a 30 power candle power gas the stripping would leave it somewhere over 20?

A. Yes, sir, but the stripping process of the 28 candle power would bring it down to about 14.

Q. I simply used the figures to try to get clear in my mind the point. If I understood your testimony, the higher candle power would make a greater net candle power after the stripping process?

A. Yes, sir.

Q. I had had the impression before that it did not make much difference how high your candle power was it would go down to the same result, but I understand it now that it would not?

A. That is right.

Mr. Ransom: That is stripping takes out about half— 42920

Mr. Chambers: No, I object. He doesn't know how much stripping they did do.

Q. What percentage of the candle power did the stripping process consume?

Mr. Chambers: That was actually carried on, if he knows.

A. I should say roughly about one-half.

Q. Now, the gas having been stripped, couldn't you have restored candle power?

A. No.

Q. Why not?

A. All the gas that would be made would be stripped. If you made any more gas it would be 42921
made in the plant and would pass through and be stripped like the other gas, it would simply be stripping more gas. But, what you could do would be what was done in this case at times. If a portion of the gas was by-passed, and you simply stripped a certain portion of the gas, you could strip a certain proportion of the gas, for instance, in a water gas plant, and restore the candle power by the amount of candle power in that which you did not strip, and thereby maintain a candle power.

42022 Walter R. Addicks, Direct.

Q. My recollection is that the Government officials would not let you do that except to some degree.

Mr. Chambers: I object to that because the Master's understanding is erroneous.

Mr. Clark: I object and take an exception to the Master's statement.

The Master: You think my recollection is erroneous?

Mr. Clark: I do.

Mr. O'Brien: I base my objection on the proposition that the Master should not take over the
42023 examination of this witness from either the defendants on cross-examination, or the complainant.

The Master: Even though he is trying to get the facts clear in his mind?

Mr. O'Brien: You have gone beyond the domain of the Master, as you have done many times before.

The Master: And probably will again, according to your notion of what the Master's duty is.

Mr. O'Brien: Of course the offense is aggra-
42024 vated by your misinterpreting the testimony.

The Master: The objections are overruled.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

Q. Now, is my recollection correct, Mr. Addicks?

Mr. O'Brien: I want to object to that on the ground that the contract is the best evidence.

The Master: I am talking of what actually happened. My recollection is that Mr. Addicks or somebody else testified that the Government engineers, Government officers, refused to let them by-pass except at certain times and under certain conditions.

Q. Did you testify anything to that effect, Mr. Addicks?

Mr. Chambers: It would be hearsay if he did.

The Master: Wait a minute, you have made your objections and the objections are overruled.

Q. Did you give any testimony of that kind?

A. I did, they took absolute control of the situation.

Q. What did they do with reference to this by-passing that could have been done as a practical matter, what action did they take, if you know?

A. They instructed me to give orders to our en- 42026
gineering department—

Mr. Chambers: Just a minute. I am going to object to that unless he says who it was, "they," we have no way of meeting it.

Mr. O'Brien: I make the same objection that I made before that the Master is continuing this cross-examination, or this direct, whatever you may call it.

The Master: That is accurate, get the facts.

A. I received official orders—

Mr. O'Brien: Where are they?

The Master: Stop this interruption and let the witness answer. 42027

Mr. O'Brien: I know, but we are getting clean outside of the border of regular proper examination here.

The Master: In your judgment.

Mr. O'Brien: In my judgment.

The Master: I am ruling against you.

Mr. Clark: If they were official orders they would be in writing and they would be the best evidence.

The Master: I am ruling against both of you.

Mr. O'Brien: Exception.

42028 Walter R. Addicks, Direct.

Mr. Clark: Exception.

Mr. O'Brien: I make the further objection that it is not rebuttal.

The Master: That objection is overruled. I am going to get the facts.

Mr. Ransom: I offered them to Mr. O'Brien on the direct case and he would not take them.

Q. Will you tell us what happened?

A. I received official order to see that by-passing of the Government scrubbing apparatus should be followed in certain contingencies in order to maintain
42029 a certain candle power at the outlet of the holder.

Q. Did you follow the orders of the Government officials?

A. Yes.

By Mr. Ransom:

Q. What was that candle power?

Mr. Clark: I object to this.

Mr. Chambers: I object to it as hearsay, incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Clark: Exception.

Mr. Chambers: Exception.

A. As I recall it it was a certain candle power at
42030 one time, and then modified.

Q. What were those?

A. I think 16 candle power, and 14, to the best of my recollection.

Mr. O'Brien: Can't you see that this is futile, it doesn't fix any time, we don't know whether we are in 1917 or 1918. It leaves a record that will not be of any benefit to anybody.

A. (Continued.) I think in that connection with the Mutual there was a still lower candle power fixed.

Q. How much benzol—

The Master: Now, don't you think you had better ask Mr. Addicks about 21st Street and

99th Street? Your questions were limited to Astoria and Ravenswood.

Mr. Ransom: Yes.

Q. At 21st Street and 99th Street plants would it have been practicable under the conditions of operation during the period of toluol extraction to so enrich the gas with additional gas oil as to produce 22 candle power on the district?

Mr. Chambers: I object to that as being incompetent, irrelevant and immaterial, the witness is not shown he is qualified, or that he knew anything about what was going on there, and 42932
the form of the question is incompetent, "would it have been practicable." The question is, under the contract, wouldn't they have to furnish their consumers with the gas required by the statute. I understand there was no legal obstacle to their doing that, and it was their duty to do it.

Mr. Ransom: The Government fixed the candle power at the outlet of the holder.

Mr. O'Brien: Ransom also interpreting the contract.

The Master: I would rather have the witness state whether it was possible to have enriched 42933
the oil at 99th Street and 21st Street beyond the point to which it was enriched at the time it was stripped.

Mr. Ransom: Well, I will put the question in that form.

By the Master:

Q. Do you get that question, Mr. Addicks?

A. Yes.

Mr. Chambers: I make the same objection.

Q. Was it?

A. Yes, I think it could have been.

Q. How much more?

A. Not higher than the 28 candle power that I have stated.

Q. What was it made at, at 21st and 99th Streets, if you recall. The records, of course, show I suppose. Did you run as high as 28 candle power on those two stations?

A. The candle power at 99th Street was measured as was customary to measure it as the gas was not washed until after it was manufactured ready for the consumers.

42935 By Mr. Ransom:

Q. It was sent to 111th Street?

A. It was sent to 111th Street, but the oil was supplied on the average amount aggregating the same amount on the average for the month but not increased or decreased, dependent upon the weather.

By the Master:

Q. Well, 99th Street would have carried more oil, wouldn't it?

A. 99th Street was—the gas went out normally as it always did.

Q. You have not answered my question. Couldn't you have increased the oil at 99th Street?

42936 A. Yes.

Q. And thus have increased the candle power?

A. Beyond what had been supplied at any other time and more than would be necessary to meet the requirements of the law.

Q. At 99th Street you could have produced a higher candle power than you actually did produce during this toluol extraction work?

A. Yes, but you will remember there was no washing plant at 99th Street.

Q. But you knew it was being washed somewhere else?

A. It was being washed by the Government at the Standard works.

Q. But you knew the gas you were making would be washed?

A. Yes.

Q. Why didn't you make it higher?

A. Because we were using and sending out the candle power out on the district that fulfilled the legal requirements under the law.

Q. How about 21st Street, could you have increased that candle power there?

A. At 21st Street I don't believe that candle power 42038
could be increased, but the situation was different at 21st Street. I don't know what the candle power in the gas, what it had heretofore been at 21st Street, as the gas was taken before being washed, and the candle power heretofore taken at 21st Street was the gas after leaving the meters and being entirely manufactured.

Mr. O'Brien: Your Honor, at this point I feel it my duty to call to your attention this fact, subject to the proofs being brought here, that at the time the arrangements were being made, at or about the time the arrangements were being made with regard to the gas companies furnishing 42039
aid in the development of toluol, counsel for the complainant was counsel for the Public Service Commission and advising the Public Service Commission at that time, and supposed to be protecting the consumers. He has all the knowledge that an attorney could have of a client by reason of his relations with the Commission at that time, and I hold it is decidedly improper to have this witness testify under the circumstances after consultation with Mr. Ransom.

Mr. Ransom: The Commission was in no way

a party to the arrangement with the Government, the Government acted under the war powers.

Mr. O'Brien: Before the witness testifies further I ask you to send down to the Public Service Commission and get the directions and statements of Mr. Ransom to show the relation that existed between him and the Public Service Commission, a party defendant, so that you will know that this examination is entirely improper.

The Master: Application denied. Proceed.

Mr. O'Brien: Exception.

42941 Mr. Ransom: That is an indecent thing which no lawyer with a red corpuscle in his blood would do.

The Master: Have you anything else with Mr. Addicks?

Mr. Ransom: Yes.

The Master: Then you had better ask a question and not continue this argument.

Q. How much higher candle power do you think you could have made at 99th Street?

Mr. Chambers: I object to that as being speculative, what he thinks.

The Master: I will take it.

42942 Mr. Clark: I object to this re-direct examination at this time.

The Master: I will take it.

Mr. Chambers: Exception.

Mr. Clark: Exception.

A. I believe the candle power could be turned out at the 99th Street manufacturing plant at about 28 candle power, and after it went to the Government washing plant it would be stripped to the lower candle power, to about 14.

Q. It would lose about one-half, the same as you testified at New Amsterdam and Astoria?

A Yes, sir.

Q. The quantities of oil which were used corresponded to those under the contract based on the previous five year average, was it?

A. They were slightly in excess of what is provided by the contract, due to—

Q. Variations in the weather?

A. No.

Mr. O'Brien: I move to strike out that question and answer on the ground that the contracts speak for themselves.

The Master: Motion denied. 42944

Mr. Clark: And on the further ground that the contract did not apply to 99th Street at all.

The Master: Motion denied.

Mr. O'Brien: Exception.

Mr. Clark: Exception.

Q. Due to what?

A. Due to the fact that we put into the gas an amount of oil per thousand cubic feet that would be proportionate to the amount of gas which was absorbed in the process. In other words, our main meters not only measured the full amount of gas that was washed, but the amount that was absorbed would be deducted. We added to the oil a portion to neu- 42945
tralize that difference, it being a small fraction.

Q. At all of these various Government stations through which gas manufactured by you was passed for the extraction of toluol, did the Government officer in charge from time to time prescribe the candle power of the gas which was to leave the holder for the transmission and distributing mains?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. O'Brien: This effort to wrap the American flag around the deficiencies of this company

cannot succeed, your Honor, I am going to object to it now.

The Master: Isn't that already in the record?

Mr. O'Brien: There is a contract made, and how can you modify it, and how can some oral testimony of this witness as to what some officer may have said to him modify it?

The Master: I will sustain the objection upon the ground that my recollection is very clear that it is already in the record.

Mr. Ransom: Will you hear me a moment
42947 on that? In Mr. Addicks' direct-examination, or on his cross-examination at the time he was on the stand, over my objection, on the ground that it was no cross-examination and not matter brought out by Mr. Addicks, you permitted the defendants to go into the matter somewhat. You said at the time that it was not cross-examination of anything which had been covered by Mr. Addicks but you directed that they should be permitted to go ahead with it. They went ahead with it, as I felt at the time, virtually making Mr. Addicks their witness on it. The matter was not fully covered in this respect, and I think
42948 I have a right to show these additional facts.

The Master: Well, it is a question of recollection. I will take mine on it. I think it has been sufficiently covered.

Mr. Ransom: Exception. Does that apply to the whole situation or only to that particular question?

The Master: To that question.

Q. Now, with respect to the possibility of re-enriching after the gas had gone through the Government's scrubbers, assuming that the Government had not fixed a candle power for the gas to go on the

district, can you state how much benzol would have been required to raise the scrubbed gas to a candle power of 23 1/2 average at the works?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. It doesn't make any difference how much it cost, under the contract the complainant was amply protected for any expense it might have incurred, any loss it might suffer in connection with doing what the contract prescribed it should do for the Government.

The Master: Objection overruled. 42950

Mr. O'Brien: Exception. I object on the further ground that the assumption is misleading that is embodied in that question.

The Master: Same ruling.

Mr. O'Brien: Exception.

A. Probably not exceeding half a gallon of benzol per thousand cubic feet.

Q. Well, you say not exceeding 5. Is that your figure, or what is your figure—

Mr. O'Brien: I object to that, he is trying to lead the witness. He has given his answer, and I object to it as a repetition of the question. 42951

The Master: I understand the question to call for the witness's exact figure rather than "not exceeding half a gallon," apparently.

Mr. O'Brien: Ransom had his own purpose in reducing the half to .5.

The Master: Are you able to give a more definite figure than merely that it would not exceed half?

The Witness: No, I am not, for the reason that in enriching with benzol in the higher candle powers, I am a little doubtful as to how much

benzol is required for the higher candle powers. This answer is quite irrespective of anything that happens to the gas after leaving the works. The answer is—

The Master: At the works?

The Witness: Based on at the works.

Q. For the process of re-enrichment after the gas has been scrubbed how much benzol would have been required?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

42953 Mr. Chambers: That is the same question he asked before.

The Master: Isn't it the same question?

Mr. Ransom: I thought his figures were based on pre-enrichment.

Mr. O'Brien: I am going to object. He is trying to correct and coach the witness. He has got to see Sir Oliver Lodge if he wants to get that over to Mr. Addicks.

Q. Was it possible to procure any considerable quantity of benzol during the year 1918, if you know?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

42954 The Master: Objection overruled.

Mr. O'Brien: Exception.

A. No.

Q. What did the Government do as to any benzol which the company had?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: I am going to let Judge Ransom develop the point if he can that Mr. Little's talk about enriching with benzol is pure non-

42955

sense, because there wasn't any benzol to be had, and the Government was taking all. If that is the fact let us have it.

Mr. O'Brien: Are you anticipating what is in Judge Ransom's mind?

The Master: I can usually see what questions are tending to; I am not dumb to that extent.

Mr. O'Brien: I object to the speech of the Master at this time.

The Master: You call for these speeches once in a while and you get them.

42956

By the Master:

Q. Mr. Addicks, what did the Government do with your benzol?

A. When the Ravenswood works was started, in order to have some benzol to put back into the Ravenswood gas when the scrubbing operations were started, they removed benzol from the 21st Street works and transferred it to Ravenswood, and I was informed by the Government officers that the reason they did that was that they could not get it anywhere else.

Q. In other words, is it your answer to the question, that the Government officials took the benzol away from you at 21st Street?

42957

A. They did that, and in addition to that they took and shipped benzol away from New York.

Q. What did they do with the benzol at Ravenswood, if you know?

A. They put it back into the Ravenswood gas in that case.

Q. The Government did?

A. The Government put it back into the Ravenswood gas.

Q. When it was shipped out of New York it was shipped to a point in Pennsylvania, as I recall. You

mean that the Government re-enriched your Ravenswood gas with benzol?

A. When they started operations at Ravenswood they took benzol from 21st Street and put it back into the gas at Ravenswood.

Q. For re-enriching?

A. For re-enriching.

Q. The Government did that?

A. The Government did that.

Q. How long did that continue?

A. Until the accumulation after the works had been
42959 started, and the Government apparatus accumulated a supply of benzol from the plant gas at Ravenswood, they then took that gas and put it back into the gas.

Q. At Ravenswood?

A. At Ravenswood.

Q. Why didn't they do it at 21st Street?

A. They did it at 21st Street as well, but they took and shipped some of the benzol from the various plants, and shipped it away from New York City.

Q. Do I understand that Ravenswood gas was re-enriched?

A. All the gas was re-enriched.

Q. At Ravenswood?

42960 A. At various places, at every plant after the gas was stripped a large part of the benzol was put back into the gas by the Government.

By Mr. Ransom:

Q. In the Government plant?

A. In the Government plant.

By the Master:

Q. Why didn't you try to get some additional benzol?

A. The Government at that time did not have benzol itself. They had a contract for benzol but couldn't get it here.

Q. Let us see if I get this right. The Government stripped your gas and took the light oils out?

A. And they took ownership of those light oils.

Q. And from those light oils they extracted benzol?

A. And they took the ownership of all the light oils and all the constituent parts of the light oils.

Q. Including benzol?

A. Including benzol. That was generally true throughout, but there were plants—

Q. They gave you back the benzol?

A. They gave us back a large part of the ben- 42962
zol.

Q. And that went back into the gas?

A. That went back into the gas.

Q. And it is your contention that that is all the benzol you had?

A. That is all we had.

Q. Or could have gotten?

A. Or could have gotten.

By Mr. Ransom:

Q. Was this benzol put back into the gas by the Government or by the company?

A. By the Government.

Q. In the Government plant? 42963

A. In the Government plant, with the Government apparatus.

Q. But the Government did not put back enough to put the candle power—

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, argumentative and leading.

The Master: The question is allowed.

Mr. O'Brien: Exception.

The Master: As I understand the question it asks for the witness's statement whether the Gov-

ernment having put back what benzol it did, did not bring the gas back to the required standard?

A. It did not.

Q. Is it your judgment that if a sufficient quantity of benzol had been available and had been used that by this method the gas could have been so re-enriched as to have carried *22* candle power on the district?

Mr. Chambers: I object to that as speculative, theoretical and incompetent, irrelevant and immaterial.

42965 The Master: I will take that. The witness has said, as I understand it, that it would have brought it up to *23* 1 *2* at the works. Apparently he draws a distinction between that and out on the district.

The Witness: I don't believe that with any enrichment of benzol, under New York conditions, we could have maintained *22* candle power at the testing station.

Q. Or that the Government could?

A. Or that the Government could.

The Master: Tell us why.

Mr. O'Brien: Who is this Government they

42966 are talking about?

The Master: I will tell about that later on, at recess.

Mr. O'Brien: Captain somebody, he doesn't define who the man is. Are we talking about some imaginary persons?

The Master: I have a pretty good imagination, and I imagine you are going to ask him that on cross-examination.

By the Master:

Q. Now, Mr. Addicks, do you draw a distinction between gas enriched by oil carrying itself to *22*

candle power on the district, and gas enriched by this benzol, you draw a distinction between them, do you?

A. Yes.

Q. You mean it has a different effect when it goes out?

A. I don't believe that the benzol that is put into the gas under those circumstances would have carried through the testing station, but I think some of it would be deposited in the mains on the way, and would close candle power.

Q. What makes you think so? Did you ever have 42968
any experience with it?

A. My general knowledge and experience would lead me to that, and also during a period of several weeks the candle power was noted leaving the Government plant and arriving at another point in the system, where apparently there was a loss of candle power.

Q. How far away?

A. Well, I presume that was within a mile, less than a mile.

Mr. O'Brien: I move to strike out as being a speculation. He says, "I presume."

The Master: Motion denied. 42969

Mr. O'Brien: Exception.

By Mr. Ransom:

Q. Have you ever had occasion, Mr. Addicks, to test the temperature of gas in holders?

A. Yes.

Q. What is your experience as to the relation between the temperature of the gas in the interior of the holder and the temperature of the outside air?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial and not rebuttal.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. I should say that the gas immediately in contact or substantially in contact with the holder would be higher than the temperature of the air if the sun was shining. If, on the other hand, the sun was not shining, I should presume that the temperature would be more nearly the temperature of the air at the surface of the holder.

Q. How about the interior of the holder?

A. As the gas is moving through the holder, and much of the gas goes from the inlet to the outlet, the temperature of the gas in the body of the holder,
42971 I believe, would be materially higher than the temperature of the air.

Mr. Chambers: This is over my objection and exception.

Q. Mr. Addicks, referring to the testimony of Mr. Hine, pages 10462, 10464, 10472, and elsewhere, I ask you this question: From your knowledge of the output of gas in the year 1918, by the Consolidated Gas Company and the required plant capacity both of operating and reserve, what is your opinion as to whether the 13th and the 42nd Street manufacturing plants of the Consolidated Gas Company, so far as manufacturing capacity was concerned were reason-
42972 ably necessary in the year 1918?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. The witness has not shown that he is qualified.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: I make the same objection, and on the further ground that no foundation has been laid.

The Master: Well, what is your judgment, Mr. Addicks?

Mr. O'Brien: On the further ground that it is vague and indefinite.

Mr. Chambers: He has not shown that he knew what they had there, or anything about it.

The Master: He probably would not know after all these years with the Gas Company just what is there.

Mr. Chambers: He would not know what factors they have in mind.

The Master: Oh, no, he wouldn't know anything about that. Go on and tell us whether you 42074
think it was necessary for your company to keep these plants in 1918.

The Witness: I can answer that question much more readily than I could the one counsel put to me, because he referred to various parts of the testimony that I am not sure I heard.

Q. I did not ask you about the testimony. I asked you the question, I merely mentioned the testimony.

The Master: The substance of the question is what I asked you.

Mr. O'Brien: What question are you asking, your Honor?

The Master: Did he believe that the company 42075
in his opinion as a trustee of this corporation, whether he felt he needed, and if it was his judgment that they needed the 14th and 42nd Street plants that Mr. Hine says they did not need at all in 1918.

Mr. Chambers: My objection is recorded.

The Master: Yes, several times.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

A. I felt that we needed them, yes, sir.

42076 Walter R. Addicks, Direct.

Q. Having regard to reasonable reserve capacity of manufacturing plant, could the 14th and 42nd Street plants, in your judgment, have been eliminated in 1918, and a reasonable manufacturing capacity still have been maintained?

Mr. O'Brien: I object to this hothouse question, something out of the hatchery upstairs, your Honor.

The Master: What is Mr. Hine's statement based on?

Mr. Chambers: He based it on a definite state-
42077 ment of fact.

Mr. O'Brien: The vague part of his question is the use of the word "reasonable."

The Master: The objections are overruled. I will take the statement.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

A. No.

Q. Considering the maximum day's send-out, what plant capacity in excess of such maximum day's send-out was in your judgment required by the Consolidated Gas Company in 1918?

Mr. Chambers: I object to that as incompe-
42078 tent, irrelevant and immaterial and not proper rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: On the further ground that there is no maximum daily output specified in the question.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. I believe that to insure the continuity of gas in the City of New York that we should have a reserve capacity sufficient to take care of an accident happen-

ing to our large works that would result in the discontinuance of manufacture at that plant for a period of time.

By the Master:

Q. In that connection, Mr. Addicks, did you notice in the public press this morning the fire close to the Brooklyn Union works in Brooklyn?

A. I did.

Q. Do you know anything about it?

A. No.

Q. You were not over there, were you?

A. No, sir. 42980

Q. You don't know how close the fire got to the works of the Brooklyn Union, except from what the newspapers said?

A. If it was the tank where the drip oil was stored it must have been in the plant, but I don't know definitely its location.

Q. All you know about it is what the newspapers said this morning?

A. Yes, sir.

By Mr. Ransom:

Q. Mr. Addicks, in your judgment, would it have been prudent and reasonable in the practical management and operation of the gas system of the complainant company to have limited the gas reserve manufacturing capacity in 1918 to five per cent above the previous maximum day's send-out? 42981

A. Emphatically no.

Q. Why, in your judgment, was not and is not a five per cent reserve manufacturing capacity reasonably sufficient, and give your reasons?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: I object because the time or the condition are not specified in the question.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Because the experience of the company plainly indicates that such a percentage would be entirely inadequate.

Q. In what respect?

A. The maximum demand on the plants from year to year plainly indicate that such a percentage of reserve would, if it had been followed, have resulted in
42983 the supply of gas in the City of New York being discontinued.

Q. If you had had a five per cent reserve capacity in 1918 and no more, gas would have gone up this winter?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, speculative, and not in accordance with the testimony. "If" is not proper, prefacing all these questions with "if."

Mr. Clark: What has five per cent in 1918 got to do with 1920? If they had five per cent in 1918 he said, gas would go out this year.

Mr. Chambers: I object to it also as not proper
42984 cbuttal.

The Master: Objections overruled.

Mr. Clark: Exception.

Mr. Chambers: Exception.

Mr. O'Brien: You are opening the door to the year we are now in, 1920.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. What is your answer?

A. I would like to have the question read.

(Question read by stenographer.)

Mr. Ransom: I will withdraw the question in that form.

42985

Q. Is the maintenance of a 5 per cent reserve from year to year anything like a proper provision for ensuing years?

Mr. O'Brien: I object to that as argumentative.

The Master: As a matter of fact, Mr. Addicks, you cannot make a 5 per cent reserve every year, can you?

The Witness: No, sir. When we build we build very much larger than 5 per cent, and if we got to 5 per cent we would certainly immediately extend our plans for a further reserve.

42986

The Master: Would you wait until you got down to 5 per cent?

The Witness: It might be, your Honor, that we might get to 5 per cent without realizing we were going to be at 5 per cent, in the middle of the winter. We might reach 5 per cent in that way, but I should not anticipate an output looking ahead with only 5 per cent reserve, but the increase in that year might bring us to 5 per cent reserve when it might not be expected.

The Master: You would get pretty busy, wouldn't you?

The Witness: Yes, sir.

42987

Q. As a matter of fact have you, in view of the situation been for some months engaged in steps for additional plant capacity for the requirements of the complainant company?

Mr. Chambers: I object to that is not proper rebuttal, and out of the time limit.

The Master: No, for some months. Objection overruled.

Mr. O'Brien: Well, you are opening up the draperies again.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

A. We have been considering—

Mr. O'Brien: Your Honor is considering this as sometime prior to August 31st, 1919?

The Master: We are taking this as bearing on the testimony of Mr. Hine.

A. We have been considering and have taken steps to increase our capacity.

Q. Ground was broken some time ago for a new plant?

42089 A. Yes, sir.

Q. How large a plant?

A. 30,000,000 cubic feet.

Mr. O'Brien: Isn't the ground already broken?

The Master: He said it was broken some time ago.

Mr. O'Brien: Wasn't it broken before?

The Master: You will have your cross-examination.

Q. At what cost?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and not proper rebuttal.

42090 The Master: I will take it.

Mr. Chambers: Exception.

A. At an estimated cost, as I recall it, of $4,500,000.

The Master: That is water or coal?

The Witness: Water.

The Master: Does that include land cost?

The Witness: No, sir.

The Master: I take it, you intend to put it over at Astoria?

The Witness: Yes, sir. Nor does it include a great deal of coal handling facilities, wharves, etc.

The Master: You mean just to have another water gas unit over at your Astoria plant?

The Witness: Another unit adjoining the present 30,000,000 unit.

Mr. O'Brien: Will that include the holders too?

The Witness: No holders.

The Master: That is a good deal more than that other 30,000,000 unit cost, isn't it?

Mr. Chambers: Same objection.

Mr. O'Brien: Your Honor, this is off the record you are asking this? 42992

The Master: No this is on the record.

Mr. O'Brien: Now you are getting into the realm of speculation.

The Master: No, I am asking him.

Mr. O'Brien: Well, I object to it.

The Master: Do you remember how much more it is than the other 30,000,000 unit cost?

The Witness: I do not remember the amount at this time, but it is more.

The Master: How much more, approximately?

Mr. O'Brien: I make the same objection, your Honor. This speculation, generalization as to prices, I think is improper. 42993

The Master: Overruled.

The Witness: I can give—

Mr. O'Brien (interrupting): It is not rebuttal, it is not in this case.

The Master: No, but I am asking it for the information of the Court.

The Witness: I cannot give you that figure, your Honor, because the present 30,000,000 unit was built as a 20,000,000 unit, and then quite large sums of money were spent on it, and the capacity of the machines were actually increased

very materially thereby, so that I haven't got in my mind the aggregate amount of the other expenditures.

The Master: You do not believe that your 30,000,000 water gas unit cost over $3,000,000?

The Witness: On the other plant?

The Master: The other 30,000,000 unit in the Astoria building.

Mr. O'Brien: Same objection and exception.

The Witness: I do not believe it cost less than $3,000,000. I think it might have cost a little

42995 more than $3,000,000.

The Master: About $3,000,000, would approximate it, would it?

The Witness: That would be my impression, but I would not want—

The Master: Well, I am not holding you to it. I was just wondering what the—how it compared.

Q. Mr. Addicks, when is that plant to be completed?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not rebuttal.

The Master: Objection overruled.

42996 Mr. Chambers: Exception.

A. On the first day of December, 1920, is the agreement.

Mr. Ransom: The defendants may cross-examine.

The Master: Mr. Chambers?

Mr. Chambers: I suggest we postpone his cross until Monday.

The Master: No.

Mr. Chambers: Has he anything more from him, any more testimony?

The Master: I assume that Mr. Addicks' examination is through. You may proceed to cross-examine.

Mr. Chambers: Well, is that the fact?

Mr. Ransom: So far as I know, I have nothing further which I intend to ask Mr. Addicks in this case.

Mr. Chambers: I would like a little time to check up some of the things he has said.

The Master: No, there is nothing to check up.

CROSS-EXAMINATION BY MR. CHAMBERS: 42098

Q. Well, Mr. Addicks, take this embryo plant you spoke of, you said that was to be built at Astoria?

Mr. Ransom: I object to the characterization as an embryo plant. It is going to keep the people of this city warm, and there is nothing embryo about it.

The Master: Objection overruled.

Mr. Ransom: The comment is unwarranted.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Are you referring to the 30,000,000 plant that has just been ordered?

Q. Yes, sir. 42099

The Master: What is the question?

Mr. Chambers: I asked him if he says that was going to be built at Astoria?

The Master: I will tell you that. That is what he says.

Q. You are going to build it in a separate building, or how are you going to build it there?

A. It will be built adjacent to the present water gas plant, on the next plot, an assigned plot for an additional unit.

Q. That will be how far away from that building?

A. I should say somewhere within 100 feet.

Q. And how many machines are you going to have?

A. I should just like to just take my memory on it. I think it is 12.

Q. And you are going to turn out 30,000,000 cubic feet a day, you say?

A. Yes.

Q. And who is doing that, the Astoria Company?

A. The Astoria Company, yes, sir.

43001 Q. They are doing it?

A. Yes, sir.

Q. Are they borrowing the money from the Consolidated Gas Company to do it?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Why didn't you do it in 1915? Why did you put off building this additional unit until now?

Mr. Ransom: Objected to.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Because it appears to be necessary now.

43002 Q. And you say it was not necessary in 1915?

A. I do not recall that it was necessary in 1915, no, sir.

Q. Will you say it was not necessary in 1916?

A. I do not think that any plant was necessary in any of those years.

Q. Would you say the same of 1917?

A. In 1917 additional plant capacity—in 1917 and 1918 it developed that additional plant capacity was necessary, and it was provided.

Q. That is when you started to do this?

A. No.

Q. And why didn't you do it in 1917 then?

A. Because we provided additional capacity in 1918.

Q. I am speaking of 1917?

A. I thought you meant the winter of 1917-18.

Q. No, I am speaking of the spring of 1917, why didn't you?

A. 1917?

Q. So as to have it ready for 1918?

A. We were ready, we thought, for 1918, the winter of 1917-18.

Q. Now, were you one of the ones that were committed to the proposition that you were going to move 43004
your entire manufacturing plant to Astoria in 1906?

Mr. Ransom: I object to such an improper question. There is not a shred of evidence in this case which indicates that they ever intended to do any such thing.

Mr. Chambers: Sworn testimony by the secretary of the company to that effect.

Mr. Ranson: There is no such thing.

Mr. Chambers: I read it. Why do you say there isn't any such thing?

The Master: How is that proper cross or material now?

Mr. Chambers: To show that they should have 43005
scrapped these two inadequate plants then.

Mr. Ransom: Well, they are not going to scrap them now, they are still in use, they still need them.

The Master: I will allow it as bearing upon the witness's testimony that 14th and 42nd Street plants are used and useful and needed.

Mr. Ransom: Well, it assumes various facts that are far contrary to the record and far contrary to the fact.

The Master: Then Mr. Addicks will say so. Do you recall the language of the question, Mr. Addicks?

The Witness: No.

The Master: Read the question.

(The question was read by the stenographer.)

The Master: In order that the witness may understand it, it assumes two statements, one, that anybody was committed, and two—or that there was a commitment by anybody to go to Astoria. Now, answer the question.

4,000 The Witness: Prior to the passage of the 80 Cent Gas Act, there was anticipated the possibility of moving certain plants of the Consolidated Gas Company to Astoria, which, after the passage of the 80 Cent Act, so far as I was concerned, was abandoned, and I have heretofore stated some of the reasons for that position.

69 Which plants were you going to abandon?

Mr. Ransom: Objected to.

The Master: That is too far afield. I will sustain that objection.

Mr. Chambers: Exception.

69 Aren't you below 5 per cent holder capacity now?

4,000 Mr. Ransom: Five per cent holder capacity?

Mr. Chambers: Yes.

Mr. Ransom: I object to it.

The Master: Objection sustained. That has not been the inquiry at all; it has been a question of manufacturing capacity.

69 Well aren't you below 5 per cent manufacturing capacity?

A At the present time?

69 Yes; or rather, so as not to get over the dead line on time, we will just make that, weren't you in 1915, the first eight months?

Mr. Ransom: There isn't any dead line on used and useful, is there, your Honor?

The Master: No. I will take evidence as of any time bearing on this issue of used and useful.

The Witness: We still keep a little more than 5 per cent reserve.

Q. How near are you to it?

A. Our maximum output so far that I have is 166,400,000. Five per cent of that would be 8,300,000 and we have about 9,400,000.

Q. Well, have you ever been below 5 per cent, to your knowledge? 43010

The Master: Does that include 14th and 42nd Streets?

The Witness: Yes, sir.

Mr. Ransom: That is full capacity?

The Master: If you did not have them, you would not have any reserve?

The Witness: No, sir.

Mr. Chambers: I object to that question.

The Master: The objection is overruled.

Mr. Chambers: Exception.

The Witness: What is the question?

(The question was read by the stenographer.) 43011

The Witness: In the winter of 1917-18, I think we got into that condition.

Q. Below 5 per cent?

A. Yes, sir. That is when we increased our plant capacity.

The Master: Was that when you added that ten million over at Astoria?

The Witness: No, sir. We increased the capacities of various plants by the additions of certain facilities and the addition of a high-pressure blast and additional purifiers and so forth.

Q. You did not make any effort then to build an additional unit?

Mr. Ransom: What, in war time?

The Witness: No, because we got between twenty and twenty-four million additional capacity by doing this, Mr. Chambers, and as counsel just said, during war times we did the best we could, under the circumstances.

Q. The United States was not at war in 1917.

The Master: It seemed to me it started on the 6th of April, 1917, Mr. Chambers.

43013 A. The plant capacity was reached in the winter of 1917-18, and in 1918 we were at war.

Q. You say it would not be advisable to build a unit during war times.

A. It might be necessary.

Q. And you have found it so now, haven't you, and aren't we in war now?

A. May I answer?

Q. Yes.

A. If we had not been able to do it as we did do, we would have built a new plant, undoubtedly, and even in war times.

Q. You are doing it now, you are contemplating

43014 building one right now?

A. Yes.

The Master: The witness has said so three times.

Q. And it is war times now. I wanted to show that.

Mr. Ransom: The only war there is is in this case. The only war left is in the Senate, I think.

Q. Now, in your answer to counsel's questions that in your opinion the 42nd Street plant, that you thought it would be needed—

Mr. Ransom: He did not say that.

The Master: Let Mr. Chambers frame his question any way he likes.

Q. Did you take into consideration the fact that the plants of all the affiliated companies, Northern Union, Astoria Light, Heat & Power, the Central Union, New Amsterdam, Standard and Mutual, that they were so connected that the gas could be and was supplied to the distribution system in the entire territory covered by those companies?

Mr. Ransom: I object to that question as asked, because it is utterly inaccurate, he was not 43016
asked such a question as to whether he thought they will be needed.

The Master: Objection overruled. We are talking about 1918, and your opinion that 14th and 42nd Streets were needed then.

Mr. Ransom: Furthermore, there is no Northern Union plant.

The Master: I do not know anything about that. We will assume the question means, did you have in mind at all when you say that 14th and 42nd Streets were needed and useful and should have been retained in reserve or otherwise, that in 1918 there were these various plants, 43017
and that each, in fact, supplied gas to the distribution system, and were so connected that they could?

The Witness: I did.

Q. That if all of the plants of the Consolidated Gas Company were shut down absolutely, the Consolidated would still obtain gas, wouldn't it, and have gas?

Mr. Ransom: Objected to as vague and meaningless.

Q. Shut down all the plants of the Consolidated, the Consolidated could draw—

The Master: You mean 21st, if you closed up 21st, 09th, 14th and 42nd?

Mr. Chambers: Yes.

The Master: You would still be able to get an ample supply and sufficient—

Mr. Chambers (interrupting): I did not say that. I said you could still draw gas from the system.

The Master: Objection sustained. It is a use-
43012 less question. The question is, can you get enough gas to supply the mains of the company?

Mr. Chambers: Well, it will be a question of which company was able to use it, first.

Q. Did you take into consideration that it would take two weeks to bring a plant in a cold condition to a condition where gas could be produced?

The Master: You mean a coal gas plant?

Mr. Chambers: Yes.

The Witness: Yes.

Q. You took that into consideration?

A. Yes.

Q. If it took two weeks to get a coal gas plant in
43020 condition to produce gas, and there was a sudden emergency confronting the company, such a plant would not be of any consequence to take care of the sudden emergency, would it?

A. The company would anticipate that sudden emergency, depending upon the season, and would have it in that condition, ordinarily.

Q. They did not do that, though?

The Master: When?

Mr. Chambers: In 1918.

A. They did not do it in 1918.

Q. You operated—

The Master (interrupting) : Wait a minute. You have got a question.

Q. Did you do it?

The Master: In 1918 did you have your 14th and 42nd Street plants fired up in anticipation?

Mr. Ransom: Which part of 1918 do you mean, the beginning or the end?

The Master: For the winter of 1917-18.

Q. Say, on the 29th day of December, 1917?

A. I won't be certain whether we did have it under fire at that particular day. We had it under fire during the winter of 1917-18. 43022

Q. You ran it for about three days?

Mr. Ransom: I object to it as indefinite in form, the question of whether—how many days they made gas under necessity for reserve purposes is one thing, and the question of how long it was fired up is another.

The Master: Overruled.

A. I do not recall the time that it was actually fired up.

Q. You won't say that it was fired up before the cold snap in December, 1917, will you?

A. No, I won't say whether it was fired up before that cold snap or not. 43023

Q. And in order to be useful in an emergency, you would have to have it all ready, wouldn't you?

A. Yes. It was probably not at that time, but it was ready, I think, for the maximum day for 1918.

Q. You want to go on record, do you, as stating to the Court that it is your judgment that those two coal gas plants should be carried with the very slight use to which they were put in 1918?

Mr. Ransom: Objected to.

The Master: Objection overruled.

A. I do.

Q. What justification can you give the Court for carrying, say, the 42nd Street plant?

A. Because they are now required for the purposes of the company.

Q. That is the only justification you can give?

A. The justification is—

The Master: They are in use now, are they?

The Witness: They are, sir.

The Master: In use this winter?

The Witness: They have made over 4,000,000 cubic feet of gas apiece this winter.

43025 Mr. Ransom: A day?

The Witness: A day.

The Master: For how long?

The Witness: Well, that is their maximum.

The Master: I mean how long have they been operated this winter, since when?

The Witness: I do not recall the date they were fired. Either the latter part of December or the first part of January, I think.

The Master: Have they been in use ever since?

The Witness: Yes, sir.

The Master: And they are actually in use

43026 now?

The Witness: Well, they will have to be discontinued now on account of lack of coal.

The Master: Lack of coal?

The Witness: Yes, sir.

Q. Both plant do you speak of?

A. Both plants.

Q. And of course the trial of this case did not have anything to do with firing them up, did it?

A. No, sir; they have been fired up heretofore, the same way.

Q. Were they fired up in 1916?

A. I think so, but I do not remember definitely.

Q. And you think your company is justified in carrying those two plants under the enormous cost of carrying them, relative to the proportion of gas they produce?

A. Yes, sir; under the existing conditions they are.

Q. You think it is a wise and economical procedure for the company to pursue?

A. At this time, yes, sir.

Q. If you had built your additional unit at Astoria in 1917, would you still have carried the two coal gas plants, speaking of 42nd and 14th Streets? 43028

A. In 1917?

Q. Yes.

A. Yes.

Q. And when you finish your new unit over there, are you still going to carry them just the same, the 14th and 42nd Street plants?

A. I should advise it.

Q. You should advise them to?

A. Yes, sir.

Q. You are never going to give them up, I suppose?

A. I cannot look into the future.

Q. You haven't any idea that even though you have 43029
the new unit over in Astoria with the capacity of 70,000,000 cubic feet, you would still advise carrying them just the same?

A. Under the present condition of affiairs, yes.

Q. And you haven't any idea at all, after that unit is completed, of giving up these two plants?

A. I have no view other than I have at the present time, Mr. Chambers.

Q. Is there any possible situation that you can think of, whereby you would advise the giving up of those two coal gas plants?

43030 Walter R. Addicks, Cross.

Mr. Vilas: I object to that as speculative, and improper cross.

The Master: I will take it. Let me see if I can give you one, Mr. Addicks. If the Standard Oil Company of New Jersey and the Texas Company and the Gulf Refining Company guaranteed you a constant supply of oil for the next fifty years, at a price not in excess of what you are getting now, would you abandon your coal gas plant?

The Witness: And in all the quantities we
43031 would require?

The Master: Yes. I mean, putting it another way, if you were sure that for the next 50 years you would get all the oil you needed, at a price not exceeding what you are paying for it now, and that the State would not regulate by rate legislation or otherwise to change the situation or other conditions, and having in mind that you were assured that for the next 50 years you would have an adequate supply of oil and at reasonable prices and proper convenience, would you still think you would need the 14th and 42nd Street plants?

43032 Mr. Ransom: May I ask if your Honor is assuming the continuance of the 22 candle power law?

The Master: Yes, I am assuming that.

The Witness: Well, your Honor, there is a certain amount of capital which is in that plant, and assuming the present prices, under the conditions existing now, I do not believe that we could erect a new plant to take the place of those plants and charge off those plants and make a commercial proposition of it, taking those things into consideration, the interest on the new plant

and depreciation of the other plants, taking into consideration the short time in which we probably run those plants in the winter peak, as to whether it would be wise to displace those plants. With the price of oil at 3 cents, why, the situation might be different, but that is not the situation now. The price of oil now is—

Mr. Chambers (interrupting): No, we did not ask that.

The Witness (continuing): —between 7 and 8 cents a gallon.

Mr. Chambers: I move to strike that out, he 43034
did not ask that.

Mr. Ransom: That is what Little said, he said 10 cents.

Mr. O'Brien: Little did not say 10.

Mr. Ransom: He said spot oil 10.

Mr. O'Brien: Spot oil is another thing.

The Master: I will strike out the statement that the price of oil now is between 7 and 8 cents.

Mr. Ransom: Exception.

The Master: The reason I asked the question, Mr. Chambers, is this: I can see where there are possibilities that the trustees of this company 43035
and Mr. Addicks would conclude that it was wise to let these plants go.

Mr. Chambers: Well, I can't find any, and you did not succeed very well. They do not want to let them go. May I pursue that a little further?

Mr. Ransom: I wish you would.

Q. Mr. Addicks, about the only thing that perhaps would lead you to let them go would be if the City condemned them, and you would have to then?

A. We would have no volition then.

Q. As representing the Gas Company, you are one of the ones that for some sentimental reason or otherwise want to—you kind of hate to see these go, isn't that it?

Mr. Ransom: Objected to.

The Master: Well, is it for any sentimental reason, or a business reason?

The Witness: No sentiment in it whatever, your Honor.

The Master: Suppose the oil situation got so bad that you had to get more or less to coal, what
43037 would you do without 14th and 42nd Street?

The Witness: They would be very essential in the business.

Q. Your idea is that you would have to rebuild them, wouldn't you?

A. Not necessarily.

Q. Your idea is that they are—

The Master: Well, you would have to build new coal gas plants, wouldn't you?

Q. They are right up to date, A-number-1 condition?

The Master: If the oil situation got so bad you had to swing to coal, as I understand you pre-
43038 fer to do if the candle power situation did not interfere, you would either have to have 14th and 42nd Street, or build some new plants, wouldn't you?

The Witness: Yes.

Q. What are you building the water gas plant now for, if you are still holding on to your coal gas plants?

A. Because of the infernal 22 candle power standard.

Q. Is that the only reason?

A. That is the predominant reason.

Q. Is that the only reason?

The Master: He has stated it is the predominant reason.

Q. You did not see fit to return—to go to the B. T. U. system when you were offered the opportunity, did you?

Mr. Ransom: Objected to, there was no such thing ever offered.

Mr. Chambers: The order is in evidence.

The Master: I will let Mr. Addicks answer this.

A. That B. T. U. permission was one with a string 43040
tied to it.

Q. You did not go to it?

The Master: Let us have the string. You brought it out and I will have it.

The Witness: I will give it to you to the best of my ability, from memory. It permitted us—

Mr. Chambers: I will object to it if it goes outside of the order. There could not be any string, because the order is in evidence.

Mr. Ransom: The string is right in the order, in the opinion of the Commission.

The Master: You have asked a question which justifies the witness in stating why they did not 43041
take advantage of the B. T. U., and I am going to let him state it, and I will take it fully now.

Mr. Chambers: Well, I except to the enlarging of my question as cross-examination.

Mr. Ransom: I also except.

Mr. Chambers: I do not think it called for any explanation outside of the order, and—

Mr. Ransom (interrupting): The order and the opinion is in evidence and they speak for themselves.

The Master: Both sides now are excepting, and I will have Mr. Addicks tell me what that string was, and why he did not take advantage of it.

The Witness: Permissive order was given subject to the withdrawal of the permission at any time the Commission saw fit.

The Master: In other words, they would let you do it for a few weeks and then possibly stop you?

The Witness: Yes.

43043 Mr. Chambers: I object to that, this is your interpretation of it.

The Master: This was his interpretation, that is what I want.

The Witness: But in no event, for a longer period than so many months, having in view the continuance of the war. In addition to that we would be required to furnish testing stations at our own expense throughout the City, the number not specified, and maintain them at our expense.

The Master: It sounds like Dr. Weber, doesn't it?

The Witness: And in addition to that—

43044 Mr. Clark: I object to the comment of the Master.

Mr. Chambers: Judge Ransom was on the Commission then, I think.

Mr. Ransom: I never was on the Commission.

Mr. Chambers: Counsel to the Commission. I think he had something to do with the preparation of the order.

Mr. Ransom: I did not.

The Master: We have had enough discussion now. Major Clark noted his exception, very properly. Now go ahead.

The Witness: And in addition to that we would be required to furnish, free of charge, not exceeding two incandescent mantle lamps complete, of the type which would be approved by the engineer of the Commission, the type not being specified, for every consumer, dependent upon illumination by the flat flame burner. In addition to that, they set a B. T. U. standard of 650, which in my judgment is in excess of any equivalent 22 candle power based on water gas alone, although there is no strict relation between candle power and B. T. U. And in addition, the company was 43046
to be penalized for any reduction below 650 B. T. U's, and no premium on any B. T. U. above 650. In other words, the 650 was set at an extreme point for 22 candle power, and all the other conditions which I have given and for no specified time.

The Master: Is that all?

The Witness: I think that fairly covers the situation.

Mr. Ransom: What about price?

The Witness: I said that the price, we would be penalized for any heat unit less than 650, that is to say, that if we supplied 650, it would be 43047
80 cents, but if for any reason it was less than that, we would have to make a reduction to the consumer proportionate to the B. T. U. standard, which had no relation whatever to the reduced cost of manufacture based on the B. T. U. value.

The Master: They did not have anything in the order, that you recall, about designating anybody in the Commission to accomplish these results for you?

The Witness: No, sir.

43048 Walter R. Addicks, Cross.

Q. You say these matters you have stated are all in the order?

A. I think you will find that everything I have stated is in the order.

Q. It is your interpretation of the order?

A. I used my best memory with respect to it.

Q. Who else? This is your interpretation?

Mr. Ransom: Objected to as incompetent.

The Master: I will let the witness state that that was his understanding of it, if it was.

Mr. O'Brien: And also it was Judge Ran-
43049 som's, he can state.

The Master: Was that your understanding of the order?

The Witness: Yes, sir.

The Master: Did you read the order?

The Witness: Very carefully.

The Master: That is the way you read it?

The Witness: Yes, sir.

The Master: That is why you would not have anything to do with it?

The Witness: That is the reason why we would not have anything to do with it.

Q. You did not in any way consent to that order?
43050 Did not the company consent to the making of the order?

A. Consent to the making of the order?

Q. Yes; weren't you in conference before the order was made?

A. We had nothing to do with it.

Q. And didn't you ask that it be made such an order?

A. We were in conference with respect to the B. T. U. matter, and to the best of my recollection the hearing was suddenly closed, without the company's witnesses being allowed to testify.

Q. Who was conducting the hearing?

A. Why, I think Mr. Straus was conducting the hearing.

Q. And who was acting as counsel for the Commission?

Mr. Ransom: Objected to.

A. That I do not remember.

Mr. Ransom: I was not.

Q. Did you testify?

A. I do not think I did, in that proceeding.

The Master: I think we have had enough on that. 43052

The Witness: We had other witnesses, but we were not able to produce them.

The Master: I think we have had enough of it.

Q. Do you know as a matter of fact that the order was made at the instance of the United States Government?

Mr. Ransom: Objected to.

The Master: Sustained. I do not care who the order was made by, or at whose instance. The witness has fully described why it did not interest him as an officer of this company.

Mr. Chambers: Exception. 43053

Q. And for the reasons you have given, you did not acquiesce in it, is that it, did not accept it or act under it, for just the reasons you have given?

A. Well, I gave you my impression of the order.

Q. Well, is that the reason?

A. I am not the acting officer of the company.

Q. Well, did the company take it up to see whether they would operate under it?

A. The company did not accept the order, Mr. Chambers.

Q. And were those the reasons that you have given, the reasons why they did not?

Mr. Ransom: Objected to as incompetent, the company has stated its reasons.

The Master: I will let him state the reasons that animated him, and it does not appear that he had anything to do with it.

Mr. Ransom: The company stated its reasons in writing.

The Witness: I have stated that those are the reasons that I had, so far as I was individually concerned, your Honor.

43055

Q. Did the Executive Committee take it up?

A. I do not remember.

The Master: The trustees did, or the operating officers, responsible officers?

The Witness: The officers did.

Q. Were you in attendance upon the meeting?

A. Well, I had discussed it with the president very frequently at that time.

Q. Well, did they at executive sessions take it up?

Mr. Ransom: I object to this.

The Master: I won't take any more on this, objection sustained.

43056

Mr. Chambers: Exception.

Mr. O'Brien: Your Honor does not consider it important to know whether or not the men who controlled the destinies of this company, who mould its policies, took this up and discussed it or passed upon the resolutions about it?

The Master: The record shows what I think about it.

Q. Have you ever taken the temperature of the gas in any of these holders? The holder at 99th Street, or did you in 1916, '17 or '18?

A. No.

Q. Did you take the temperature of the gas in the holders at 14th Street?

A. I have not, no.

Q. Or any of the holders of the Consolidated or its allied companies?

A. No, I do not recall doing such.

Q. And did you ever ascertain how the temperature compared between the gas in the holder at any of those times and the gas in the mains that passed from the holder into the mains?

A. The gauges or the charts that were produced yesterday will give you some indication of that. 43058

Q. You mean the weather charts?

A. No, the charts that were produced from the Gas Company mains and by-pass mains.

Q. They will give the temperature?

A. It will give some ieda of it.

Q. Of the temperature. Where will you find the temperature on those charts?

A. Those charts indicate a certain temperature in the gas holder and indicate a falling off in the temperature going through the by-pass and then the restoration of it.

Q. What charts do you mean had any temperature? Not those produced by the Weather Bureau? You 43059
mean those maps of the by-passes and over-passes?

A. No, the charts that were produced here.

Mr. Ransom: The charts in relation to the tests on mains across 14th Street.

Q. There has been no such charts introduced in evidence here, Mr. Addicks?

Mr. Ransom: Yesterday. I noticed at the time that Mr. O'Brien and Mr. Clark objected, that you were not paying attention.

Mr. Clark: They were not put in evidence.

Mr. Ransom: Yes, they were.

Mr. Chambers: Those wheeled things?

Mr. Ransom: Yes.

Mr. Chambers: No, they were not.

Mr. Ransom: Of course they were.

Mr. Chambers: You withdrew them.

Mr. Ransom: I did not. Later when Mr. O'Brien was cross-examining, Mr. O'Brien laid the foundation for putting them in, and the Master ruled that Mr. O'Brien had proved their competency, and received them, and I say in justice to you that I noticed at the time Mr. O'Brien and
43061 Mr. Clark objected to them, that you were not paying attention.

Mr. Chambers: I must have stepped out of the room. They were ruled out when I objected.

Mr. Ransom: Yes.

Mr. Chambers: The Master said that you had to get somebody else here to prove them.

The Master: Yes, they are in. Mr. O'Brien opened the door and asked the witness whether he made tests, and opened the door for them, and I ordered them in.

Mr. Chambers: Well, over my objection.

43062 Mr. Ransom: Not entered at the time.

Mr. Chambers: Well, Mr. O'Brien objected to it, and I will adopt it.

Q. You did not make any, Mr. Addicks?

A. No. Those were submitted to me, and I took note of them.

Q. Those would not show the temperature of gas in the holder at the same time?

A. They would show the temperature of the gas coming through the mains at times, which would indicate the temperature of the gas, the minimum temperature of the gas in the holder.

Q. Well, then, you say the temperature of the gas in the holder would be the same, is that it?

A. No, I did not say that. The temperature of the gas in the holder might have been much higher than that.

Q. But you don't know anything about what it was in the holder?

A. No.

Q. Not having taken it?

A. No.

Q. Nor was it taken by the company?

A. I do not know of it being taken. It may have 43064
been, but I do not know of it.

Q. Now, in the summer time these over-pass and gutter pipes would not have anything to do with—the temperature would be very high, wouldn't it?

A. It would have something to do with it, yes, sir, in the summer time as well as in the winter.

Q. You mean it would increase the candle power quite considerably, wouldn't it?

A. Yes.

Q. If the temperature was up to 90?

A. It would not increase the candle power.

Q. Wouldn't it take up those oils that were dropped in the winter? 43065

A. There would not be any oils in the by-passes. I am speaking now of the overhead. You are referring to the overhead by-pass?

Q. Yes, and the gutter by-pass?

A. In the gutter by-passes, if any oil were in those by-passes and the heat of the sun struck them, it would tend to take them up.

Q. So really, to be fair to us, in the summer time it would have a tendency to increase the candle power, if there were oil in those pipes?

A. Outside of the tolnol washing period.

Q. Yes.

A. It would tend to increase the gas, if any consumer were on it, if there were oil lying in the gutter pipe, for instance, during the night and the sun shone on it, it would tend to increase the candle power.

Q. Would it increase it as much as you said it would decrease it when it was below 20, when the thermometer was below 20?

A. If the same quantity of gas was involved, and the same quantity of condensation existed in the mains, I should expect the candle power to be practically re-
43067 stored. There probably would be some loss, because perhaps all of it would not go back into the gas.

Q. That is always when the thermometer is above 20, is it?

A. Always when the thermometer is above 20. We were speaking about summer time.

Q. Yes.

A. Of course, the thermometer would be above 20 there; but even when the thermometer was below 20 and the sun shone strongly on the pipe, some of it might be restored under those circumstances.

Q. You haven't any idea where this gas came from that was introduced into these by-pass pipes or the-
43068 gutter pipes, have you?

A. No.

Q. Or how it was flowing?

A. No. Well, it is usually flowing towards consumption, flowing away from the plant, but otherwise I cannot distinguish the gas.

Q. And that would be a relatively small quantity, wouldn't it, compared with all this gas in all the mains?

Mr. Ransom: Objected to as incompetent.

The Master: Overruled.

A. In the by-pass, no, because it would be the main supply of the gas from the plant, and practically all of the gas in that district in 14th Street goes through those mains.

Q. They go through the other mains in the adjoining streets, you heard the witness testify, didn't you?

A. I did not hear the witness testify, but—

Q. (Interrupting.) And there are mains in every street, pretty near?

A. Yes, and whatever was supplied to local distribution mains by other supply mains may not go through that by-pass, that is out beyond Union Square, 43070
and out to the west, if there were such supply.

Q. There is gas in every main that is in every street?

Mr. Ransom: Objected to, the counsel is not distinguishing between transmission lines and distribution mains.

The Master: I will allow it.

Mr. Ransom: It is vague, a trick question.

A. There is gas in all the mains in all the streets.

Q. If the temperature in the holder was lower than the temperature in the by-passes, would candle power be gained then? If the temperature of the gas in the holder was lower than the temperature of the gas in 43071
the by-pass or gutter pipes, would you gain or lose candle power?

A. You said gain, that is why I hesitated. Why, if the temperature of the gas in the holder were lower than the temperature of the gas in the by-pass I would not expect a loss of candle power in the by-pass.

Q. Supposing they were just the same, the temperature of the gas in the holder the same as the temperature of the gas in the by-pass?

A. I would not expect any loss in that event.

Q. Supposing the temperature in the holder was just as—suppose it were 10 degrees higher than the temperature in the by-pass, would you expect any material loss then?

A. No, I would not expect any gain or loss.

Q. Where is the line of demarcation?

A. If gas has already been subjected to a lower temperature, I would not expect any further loss in candle power unless you went below that temperature, nor would I expect any gain if you went above that temperature.

43073 Q. If gas in the holder was zero and the gas in the by-pass or gutter was zero, you say there would be no loss?

A. I would not expect a loss, no, sir.

Q. Now, take the outlet pipes of these holders, they are exposed, aren't they, usually?

A. The outlet pipes?

Q. Of the gas holders?

A. No.

Q. Those are all underground and covered?

A. They are all underground and covered, yes, sir.

Q. Don't you take gas from the outside of the

43074 holder?

A. No.

Q. Will you say that gas is not exposed at any place around the holder, when it goes out into the distribution system at no place is there any time it is exposed?

A. I do not recall any.

Q. It is exposed, of course, in the holder?

A. No, pipe is not exposed in the holder.

Q. I mean the gas in the holder is exposed, if the holder is exposed?

A. The whole volume of gas is exposed in the periphery of the holder and in the ground, but that does not include the entire gas in the holder.

Q. Where can you find any justification for your interpretation of the strings to the order that you testified to?

The Master: This is the form of the question now?

Mr. Chambers: Yes.

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained. The Master is reading the order here, and will determine 43076
himself the accuracy of the witness's statement.

Mr. Chambers: Exception.

The Master: So far as the Master has read they are substantially in accord.

Mr. Chambers: The interpretation.

The Master: Yes.

Mr. Chambers: Then the Master better read on.

The Master: I read on to the finish of the order, and I am reading the opinion now.

Mr. Chambers: Where is the statement in there that Mr. Hine reported that the average candle power was above 22? 43077

The Master: So long as the Master is under cross-examination, he will answer that on page 8 of the opinion of Mr. Straus, which is printed as part of the order and referred to therein—

Mr. Chambers: Oh, no, the opinion of Straus was offered by complainant and not by the defendant.

The Master: As part of the order—

Mr. Chambers: Offered over our objection and exception.

4307-8

The Master: All I find here is an exhibit marked Defendants' Exhibit NN.

Mr. Chambers: Well, I will refresh your recollection on it. The order was offered in evidence by the defendants.

The Master: Well, I consider the opinion part of the order anyhow, and I probably ruled that before, but I will do it now anyway.

Mr. Ransom: Your Honor did so rule once before, when I undertook to separate it from the opinion.

Mr. Chambers: I am just calling your attention to the fact that it was not our testimony.

4307-9

The Master: And so long as Mr. Chambers wants to have it, I read from page 8, "By authorization of the Commission."

Mr. O'Brien: Will you let Judge Ransom state whether he drew the order, or whether he drew the opinion?

Mr. Ransom: I did not draw the order.

The Master (reading): "By authorization of the Commission Mr. W. F. Hine," whose name sounds familiar to the Master, "Chief Gas Engineer, has established testing stations throughout the City, and from January to the present time

4308-1

has supervised tests at those stations, as well as secured the results of tests conducted in testing stations maintained by the City. The results of those tests down to and including August 31st are set forth in Exhibit I herein, and a summary sheet of this exhibit is as follows": I then read from the exhibit, "Standing of tests made from January 1st to August 31st inclusive."

Mr. Chambers: I object to the Master reading from the exhibits that are not in.

The Master: Consolidated branches 1, 2 and 3 at Grand Street and 3, 4 and 6 at 79th Street. The average for branch 1 being 22.

43081

Mr. O'Brien: Your Honor, will you permit me to make a special objection here?

The Master: No, you cannot interrupt me now.

Mr. Chambers: I want to object to the Master reading.

The Master: Consolidated Branch 1, 22; Consolidated Branch 2, 22; Consolidated Branch 3, 22.1; Consolidated Branch 3, 79th Street 22.6, Consolidated Branch 4, 79th Street 22.6; Consolidated Branch 6, 79th Street, 22.6; and I also see Consolidated all testing stations under the heading "Testing Station" 819 tests, a maximum of 24.9, a minimum of 19.4, and an average of 22.3. 43082
Go ahead now.

Mr. Chambers: I move to strike out all that read by the Master as incompetent, irrelevant and immaterial.

The Master: Motion denied.

Mr. Chambers: It did not say whether the tests were made a mile from the works, or how they were made.

The Master: I have read some at 79th Street and some at Grand Street. I do not know where each of these eight hundred and some odd were made.

Mr. O'Brien: In behalf of the defendant Edward Swann, I move to strike out the exhibit, so far as it includes the opinion of Mr. Straus. 43083

The Master: Motion denied.

Mr. O'Brien: This is particularly based on the proposition that the defendant Edward Swann would not be bound by any admissions made by any man connected with the Public Service Commission in 1917?

Mr. Ransom: You mean Hine?

Mr. O'Brien: Or possibly Ransom. If there is an injustice done to you you can set yourself

43084

right on the record, if there is some injustice being done to you.

Mr. Chambers: I move to strike it out as not proof of any facts therein stated.

The Master: Motion denied.

Mr. Chambers: Exception.

Recess.

Afternoon session.

Mr. Chambers: On the record, I suppose, Judge Mayer has directed, so Mr. Deegan of the Public Service Commission tells me, has directed me to appear before him Monday morning. He inquired about this case, and whether I was tied up here day by day, and Mr. Deegan told him I was, and he finally fixed Monday at 4:30 and directed that Mr. Deegan tell me to be there. Now, the matter that he wants to take up is regarding the Brooklyn Union, and I would like a little time Monday forenoon—

43085

The Master: You will have tomorrow and all day Sunday.

Mr. Chambers: No, I won't have tomorrow. I will have to be in court.

43086

The Master: You have my permission to have all day tomorrow and Sunday. Go ahead with Mr. Addicks.

Mr. Chambers: Well, I would like to have a little time Monday forenoon.

The Master: I cannot give it to you.

Mr. Ransom: The case will probably be over by Monday afternoon.

The Master: Oh, no, there is cross-examination to be continued Monday morning. Proceed with Mr. Addicks.

Mr. Chambers: I except. I would like a little time to consult with Mr. Deegan, and with Mr. Neumann, who is sick, in regard to that Brooklyn Union Case.

WALTER R. ADDICKS, resumed.

CROSS-EXAMINATION CONTINUED BY MR. CHAMBERS:

Q. So that the passage of gas, whatever gas passed through exposed mains by a by-pass, does not necessarily result in the depreciation of the candle power, as you have told me?

Mr. Ransom: Objected to as fully covered.

The Master: I will allow it.

Mr. Ransom: It is indefinite. Exception.

A. No.

Q. Did you mean to be understood as saying that 43088
you cannot transmit gas through the mains in this climate without losing some candle power? That would not be so, at least, in the summer time, would it? You do not mean to be understood as saying that, do you?

A. With overhead mains, I would like to be understood as saying that.

Q. But you do not lose any candle power with your mains underground, necessarily, in this climate?

A. There are times that you might not.

Q. Let us see about enriching the gas after the Government strips it. You said they took out substantially all of the benzol when they stripped it? 43089

A. No, I said that in stripping it they had their light oil, and the light oil is then treated in stills, and the benzol, the larger amount of it, is recovered. There is a small amount of the benzol that remains in the other products, not a large amount.

Q. And you say that the Government put that back?

A. The Government put that back, the larger amount of it. They retained some of it themselves and shipped it away.

Q. Some of the benzol?

A. Yes, sir.

Q. What kind of a form is benzol?

A. In liquid form.

Q. It is a liquid?

A. Yes.

Q. Before the Government stripped the gas did you have benzol as a by-product?

A. No.

Q. None at all?

A. Except what there might be in any drippage that may be recovered from the holders and the drips, and is sold under the name of drip oil, and that drip

43001 oil contains some benzol.

Q. You said that you had a quantity of that on hand that was sent to Ravenswood.

A. No, it was what the Government took. We would have no way of recovering the benzol from the drip oil but in the Government plants after they commenced to strip the gas and get the light oil, it is then treated in stills and they obtain benzol.

Q. What else takes the candle power out of the gas?

A. Well, I think all the light oil takes the candle power out of the gas.

Q. Do you say that you could not by the use of more

43002 oil enrich the gas after it has been stripped?

A. Yes, I said that.

Q. And put the enriched gas back into the stripped gas?

A. I said if you by-pass some of the gas.

Q. No, without that, by the use of by-passing, couldn't you enrich some more gas and mix it with the gas that had been stripped?

Mr. Ransom: Objected to as unintelligible.

The Master: That is not altogether so. The trouble with it is that Mr. Addicks said as often as they would enrich it, it would have to go

through the process of stripping again, and it would not amount to anything.

Mr. Chambers: Oh, no, that is not so, is it?

The Witness: Yes. The Government stripped all the gas that we made for our consumption—that we sold the consumers. Now, we would not take any other gas, make any other gas, but which would go through the Government plant, and it would be stripped again. Of course, we would not make any more gas than we could sell.

Q. You say they stripped it all? 43094

A. Yes, all except at such times as they ordered the by-pass opened, at various specific times.

Q. You had some witness testified for your company that you had a by-pass?

A. I testified to that.

Q. Well, most of the time, didn't you?

A. There was a by-pass to that plant. That by-pass was opened under Government orders.

Q. Did you ever see the memorandum Mr. Ransom prepared for Mr. Straus on that question?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial, and highly improper.

The Master: Objection sustained. 43095

Q. Weren't you advised by somebody in the Commission on that you should use more oil and keep the candle power up to standard?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Ransom: The Commission had nothing to do with it. It was the sovereign uniformed force of the United States Government, the army officers.

Q. You say that you could not inject through that

by-pass sufficient gas to have brought it up to 22 when you were using the by pass?

Mr. Ransom: Objected to as fully covered. It appears the by-pass was not under the control of the company.

The Master: He did not say that. He said when the Government would let them by-pass the gas they could mix it and bring it up to the standard.

Q. What period did you have the by-pass while the Government was extracting?

43097 A. All of the period.

Q. The entire period?

A. Yes, sir.

Q. At all the plants?

A. Well, I have in mind only one plant, because I see the by-pass in my mind as I speak of that, personally.

Q. What plant is that?

A. 21st Street.

By the Master:

Q. Do I understand you to say that you were using it all the time?

A. No.

43098 Q. The by-pass was there?

A. The by-pass was there to be used.

Q. But it was only used on particular occasions, when the Government officers would let you?

A. Yes, sir, under specific instructions.

By Mr. Chambers:

Q. When were those occasions when you used it?

A. They instructed us, when they ordered the gas to be put through their plant, a certain candle power was to be maintained outside of the holders, and the by-pass was ordered opened in order to maintain that.

They became stricter and stricter in their use of that by-pass, until finally I think it was cut off altogether.

Q. When was that?

A. I should say from memory about after thirty days from the beginning of the operation. In other words, it was started April 14th, and it would probably be May 14th or thereabouts, as I remember.

By the Master:

Q. That they stopped the use of the by-pass altogether?

A. I think after about a month.

Q. They would not let you by-pass any more gas 43100
through it?

A. Yes. I think until just about the time of the signing of the armistice.

By Mr. Chambers:

Q. They did not strip any after the armistice was signed, did they, on November 11, 1918?

A. I think they did for two or three days, but they stopped very promptly?

Q. Then it stopped?

A. Then it stopped.

Q. And your gas was no longer stripped?

A. The gas was no longer stripped, but—

Q. So that— 43101

Mr. Ransom: Let him finish his answer.

Q. Have you finished your answer?

The Master: But what, Mr. Addicks?

The Witness: In the succeeding period, the light oil, in the holders and the mains, having been absorbed by the dry gas that had been going through them for several months, for several weeks we could not maintain the candle power at the testing station, even although we made it at the works.

Q. That carried you how far down: until about the list of November?

A. Yes, later than that. I think we were recovered entirely by the first of January, or I think we had recovered entirely the latter part of December. I do not know how it averaged in December.

Q. In December, 1918?

A. In December, 1918, and by the end of January we were right back to where we should be.

Q. Who was the officer who regulated that matter at the 99th Street plant, what United States officer?

43103 You said they instructed you and so forth?

A. Well, I got instructions for all the plants.

Q. Who was it?

A. Major Falk was the senior officer, and Lieutenant Lunn was the officer who had immediate charge.

Q. Lieutenant Lunn, you say?

A. Lieutenant Lunn, yes.

Q. Who issued the order: which one of those two?

A. I think both did.

Q. Oral orders?

A. No, sir.

Q. Written?

A. Always written.

43104 Q. And you have the order?

A. Yes, sir.

Q. Have you got it here?

A. I have not it here: I do not know whether counsel has it or not.

Q. When was it addressed to you, what year and what time?

A. The first order on or about the 14th of April.

Mr. Chambers: I would like to see the order, since they have asked or inquired about it, and got it in the record that they issued orders I think we should have the order.

Mr. Ransom: On page 4491 of the record many, many months ago, the defendants, when Mr. Addicks was first on the stand, went into that part of the case, and the orders were offered to examining counsel for the defendants, and were not taken.

Mr. Chambers: I think it is all incompetent now, but you allowed counsel to state what the orders were and nobody has ever seen them or knows what they were.

Mr. Ransom: I have some of them in court.

The Master: You have some of them in court? 43106

Mr. Ransom: I have some of them in court.

The Master: Let us have them. Hand them to the witness.

(Counsel hands to witness.)

Mr. Chambers: I suggest that counsel produce all of them.

Mr. Ransom: I have gotten all I could. I sent down for them during the noon hour. I had no request to produce any of them.

The Master: What is your question, Mr. Chambers.

Q. Well, are these the orders?

Mr. Ransom: One of them is Exhibit 342 in 43107 evidence (handing witness).

Mr. Chambers: Let him say which one now is the order in which he was ordered not to use the by-pass.

Mr. Ransom: I do not know as I have the by-pass orders here.

A. The order of April 13, 1910, is Exhibit No. 342, which is already in this case.

Q. Is that the order?

A. No, that is the order to turn on the gas.

Q. I am asking you now just to pick out the order

from either one of these two officers, wherein they ordered you not to use the by-pass?

A. Where we were ordered not to use the by-pass?

Q. That is all we are interested in now. I mean you said you had orders that you could not use the by-pass longer; now, I want to see myself what the order is.

A. There is a letter here of May 21st.

Q. That is the one?

A. This is one of them: "In order to maintain"—

Q. No, I did not ask you to read it.

43109 A. Oh, I beg your pardon (handing counsel).

Q. Now, this is the one I have, is it?

A. That is one of them.

Q. Well, that is dated May 21, 1918?

A. Yes.

Q. I understood you to say it was in April?

Mr. Ransom: Perhaps that may be one of them (handing witness).

The Master: No, the witness said about thirty days after they started, sometime in May, he got a notice that they could not use the by-pass any more.

A. I find from these letters that statement is wrong.

43110 My memory is wrong to some extent.

The Master: You can correct your recollection when we get to it.

Mr. Ransom: Have you the letter entitled, "Measures to prevent the by-passing of rich gas around scrubbers"? Is that the letter you have?

Mr. Chambers: It is. I want to get all the orders here.

Mr. Ransom: I do not know that I have them all here. The letters I sent for were the letters which fixed the candle power at the outlet of the holder. That is what I asked for.

The Witness: I said that there was something about the time of the starting of the plant. There is a letter dated April 12th (handing counsel). That however, is an officer I did not mention before, Major String.

Q. Do these three cover the whole subject of the order in regard to the by-passing at the 21st Street plant?

A. There is a further order on August 21st (handing counsel).

Q. Are there any others, or are these all now?

A. I do not think so. 43112

Q. Or don't you know?

A. I think there is still another, particularly applicable to the Mutual Gas Company, but not to this company. I do not recall any others but those—although there may be others.

Q. And there were no oral instructions, they were all written?

A. There might have been some oral instructions on the 13th or 14th day of April, following that letter of the 12th of April.

Q. I think I asked you did you attend any of the conferences at the Public Service Commission before the order was made and entered in regard to B. T. U.'s? 43113

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: I will sustain it.

Mr. Chambers: Exception.

Q. When did you first take up the question of building this new unit for water gas, 30,000,000 cubic feet of water gas production?

A. Sometime in December.

Q. December of 1919?

A. Yes.

43114 Walter R. Addicks, Cross.

Q. Was it about the middle of December?

Mr. Ransom: I object to the question as vague.

The Master: Overruled.

Mr. Ransom: The question means nothing in that form. Exception.

A. I cannot locate the exact date.

Q. Was the contract let in December?

A. The authority to proceed was given in December, yes.

Q. Who was the contract with?

43115 A. I stated this morning the Bartlett-Hayward Company.

Q. Oh, the Bartlett-Hayward Company.

A. Yes, sir.

Q. They were to have it ready when, did you say, under the contract?

The Master: December 1st.

Mr. Chambers: Did he say the exact month? That is what I want to get at.

The Master: On December 1, 1920.

Q. Did you take up the question of building coke oven plants, or did you just limit your consideration to the building of a water gas plant?

43116 A. We limited our consideration to the building of the plant we could operate under the 22 candle power law. We considered all other plants, but the considera tion had to fall on one that would obey the law.

Q. And you felt that this water gas plant, I assume, by making the contract, was the thing to build, in the face of the situation—to build an additional water gas plant?

A. There was nothing else to do, Mr. Chambers, under the law.

Q. That was your own idea, was it?

A. No, that was the concensus of opinion.

Q. Of the trustees?

A. Of those who considered the plan.

Q. Who considered it?

A. All the principal engineers of the company, and the president, and one of the trustees and myself.

Q. Whom do you mean by the principal engineers?

A. Well, I mean Mr.—

Q. W. Cullen Morris?

A. Mr. Bradley and Mr. Woods and Mr. Cullen Morris and the president, and one of the other trustees and myself.

Q. And it was the concensus of all your opinions 43118
that the water gas plant was the thing to build?

A. It was the only thing under the law we could build.

Q. Didn't you build, some or part of the coal gas plant, at Astoria, while the present statute was in force and effect?

A. No.

Q. No coal gas plant was ever built, or any part of it, from 1906 to date?

A. No, sir.

Q. At Astoria?

A. No, sir.

Q. Didn't you build some part of the Astoria coal 43119
gas plant while the statute of 1906 was—after it was passed, but before it went into operation?

A. I think the plant was in operation after the law was passed, but the plant was being built, beyond peradventure, before that time. It was started, as I recall it, after the law, the 22 candle power law, had been passed.

Mr. Ransom: Started after?

The Witness: Well, I say started; I mean the plant was started running.

Q. It is your idea, is it, that coal gas plant is impracticable under the statute as it now stands?

A. No, I won't say that. It is practical within a limited degree, but it must keep within those limits that the water gas plant as made commercially can enrich the coal gas to the 22 candle power standard, and that is the limit to which we can go.

Q. What candle power did you furnish before the statute went into effect?

A. 20.

Q. 20?

43121 A. Yes.

Q. Is it not a fact, Mr. Addicks, that a 22 candle power statute was passed in 1897, or thereabouts?

A. Where?

Q. Here in the state.

A. Yes, but our charter provision was 20 and we worked under our charter provision in the city.

Q. You say you were not bound by the 1897 candle power statute?

A. No, sir.

The Master: You were not?

The Witness: No, sir; we were bound under the charter provision of 20 in the City, and that

43122 is what we did furnish.

Q. So that when you built the coal gas plant at Astoria the statute required you, at least, you say, under the statute, to furnish 20 candle power?

A. Yes, that is what we were actually furnishing, and you will find it in the original 80-cent case.

Q. You built your coal gas plants in the face of that 20 candle power charter, at least?

A. Yes.

Q. Did you consider making this new unit of 30,000,000 cubic feet—did you consider making a part of it coal gas?

A. We considered all phases of the question of plant, coal gas as well as water gas.

Q. You were not obliged to make it all water gas, were you?

A. Well, the question arises there as to the amount of money invested per thousand cubic feet daily capacity.

Q. I gather the effect of your testimony is that, while in the coal gas plant you can make 20 candle power all right, 22 you cannot?

A. No.

Mr. Ransom: Objected to as incompetent. He has not said any such thing. 43124

Q. Isn't that your statement?

A. I never made that statement.

The Master: He has never made that statement; he has made the statement that other witnesess have repeatedly made, that you cannot get more than 16 out of a coal gas plant.

Q. How do you reconcile the fact that you built a coal gas plant under a statute that you say called for at least 20 candle power, and now you say you should not build them when it calls for 22?

Mr. Ransom: I object to that.

The Master: Let Mr. Addicks now make his speech that is called for by the question. Tell him all about it, Mr. Addicks. Get it on the record. 43125

A. The mere question of a certain number of thousand cubic feet per day of 13 to 14 candle power gas and a certain number of thousand feet of gas, of possibly 26 to 28 candle power gas, and to so be able to arrange that mixture, all during the period of the year as to insure a mixed gas of 22 candle power at the testing station.

The Master: And you never have said you could get 20 or 22 out of a coal gas plant?

The Witness: No.

Mr. Chambers: That was not my question.

The Master: Yes, it was.

Mr. Chambers: I did not mean it that way.

Q. Have you any idea how many open flame burners you have in the City?

A. How many open flame burners we have?

The Master: I do not care anything about that; objection sustained. What do I care about the

43127 open flame burners?

Mr. Chambers: Exception. I do.

Mr. Ransom: They are in this room and are never used.

The Master: What did you figure as your unit on water gas investments, Mr. Addicks?

Mr. O'Brien: Did the Master ask a question?

The Master: Mr. Addicks said something in answer to Mr. Chambers about water gas and the question of investment per thousand cubic feet. I asked him what the figure was he was talking about.

The Witness: As I stated this morning, your

43128 Honor, in this water gas plant we are putting in we do not have to put in all that is required if we had a new site or new plant, but it figures out about $150,000 per million feet daily capacity.

Q. Was the 22 candle power statute the only reason why you did not build part of that new unit for coal gas?

The Master: I think the record shows that that has probably been asked and answered at least three times, and that is all I am going to take. The question is not allowed.

Mr. Chambers: Exception. I have not asked that.

The Master: Then if my recollection is wrong, my ruling may be wrong; but it won't do much harm. I think my recollection is right.

Mr. Chambers: I think your recollection is wrong and the ruling is wrong, both.

The Master: All right.

Mr. Chambers: Exception. I think that is all for the present. I will suspend for the present. I wanted time to check up these oil tables.

The Master: Mr. O'Brien, have you any ques- 43130
tions?

Mr. O'Brien: Yes, sir. I will try and avoid covering exactly the same ground, although of necessity we will overlap on some things that have been brought out.

By Mr. O'Brien:

Q. Who represented the complainant company, Mr. Addicks, in the negotiations with the Government looking toward the proposition of giving the Government the use of some of the plants?

Mr. Ransom: Objected to as immaterial and not cross-examination. It has been fully covered at great length by the defendants while Mr. Ad- 43131
dicks was on the stand before.

The Master: What is the purpose of this?

Mr. O'Brien: Why, this witness discussed this question in his testimony this morning as though he had represented the company, and he was dealing with the Government, and I want to probe into that matter to find out if he was the representative of the company in these negotiations.

The Master: What has that got to do with this subject under inquiry?

Mr. O'Brien: Why, it has everything to do with the subject, your Honor.

The Master: Objection sustained.

Mr. O'Brien: You have allowed this witness—Well, you won't hear my explanation?

The Master: Not when you say it has everything to do with it.

Mr. Ransom: I merely asked this witness certain engineering questions.

Mr. O'Brien: It is entirely involved in the inquiry that was opened up this morning.

43133 The Master: You will have to show me how it bears on it. Who opened up negotiations—what has that to do with the actual operations of this plant?

Mr. O'Brien: Have I got to give you in advance my cross-examination of this witness?

The Master: No, you have got to show me how it bears upon the situation.

Mr. O'Brien: I do not want to tell that witness what I want to bring out.

The Master: Then ask another question, I have sustained the objection to this one.

Q. Was there any necessity of the Consolidated Gas

43134 Company entering into this contract with the Government?

Mr. Ransom: Objected to as fully covered by the defendants.

Q. (Continued.) That enabled them to produce tolnol in any of the company's plants?

The Master: I am going to take Mr. Addicks' answer. Was there any necessity for your company entering into these contracts?

A. Any necessity of our entering into them?

The Master: Yes.

The Witness: I understood they were Government necessities, your Honor.

43135

The Master: Mr. O'Brien wants to know why you entered into these contracts with the Government. Why did you do it?

The Witness: Because the Government took the position that we should do it.

Q. Did you consider, or did any of the officers who directed its policy, consider that they were commandeered into making these contracts?

Mr. Ransom: Objected to as fully covered.

The Master: I am going to allow it.

Mr. Ransom: It was fully brought out.

The Master: I am going to allow it again.

43136

Mr. Ransom: The Government took the plants first and made the contracts afterwards.

The Master: I am going to allow this question now.

A. The original communication of J. N. Hoffer I understood to be a commandeering order.

Mr. Ransom: Exhibit 340.

Q. May we assume, then, that the company's officers felt that they could not for any reason decline to enter into these contracts?

The Master: May he make that assumption, Mr. Addicks?

A. May I have that question again?

43137

(Read by the stenographer.)

A. Well, I for one would not feel that I could decline to enter into the contract.

Q. I am asking you about the officers of the company, and I mean those who made the determination of the company to enter into the contract?

A. I can answer as to myself. We were at war then, Mr. O'Brien.

Q. Did you consider the question of the loss that might come to the consumers in paying the price fixed by statute?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Q. (Continued.) For a commodity which they were not receiving?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Ransom: It was covered months ago.

Mr. O'Brien: Exception.

Q. Is it not a fact that other gas companies in New York City did not enter into such contracts?

Mr. Ransom: Objected to.

43139 The Master: Sustained.

Mr. Ransom: It was covered months ago in almost identical form by Mr. O'Brien.

Mr. O'Brien: Exception.

Q. Is it not a fact that a large number of gas companies in the country did not enter into such contracts?

Mr. Ransom: Objected to as immaterial and incompetent, not cross-examination.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Where did you get the idea, Mr. Addicks, that benzol was hard to get in 1917 and 1918?

43140 Mr. Ransom: Objected to.

The Master: Overruled.

Mr. Ransom: Exception.

A. I got the idea in the first place from the statement of the Government that they would require both the benzol and the toluol, and I also—

Q. Have you not—

Mr. Ransom: Let him finish his answer.

The Master: Judge Ransom, if you stop doing that I will see that he finishes his answer.

Mr. Ransom: It often happens not.

The Master: I will attend to it. Now stop it.

Mr. Ransom: I will defer to the Master.

A. And I also got the confirmation of that, that when our plant was started they had no benzol, or rather when Ravenswood was started they had no benzol to put in Ravenswood to start the plant with.

Q. Don't you know, Mr. Addicks, that the Ordinance Department had a rule prohibiting the use of benzol in munitions to be used by the United States Army?

Mr. Ransom: Objected to as immaterial. 43142

The Master: Objection sustained. I do not know that Mr. Addicks has said a word about the use of the benzol.

Mr. O'Brien: Your Honor, I do not know whether I shall stop this examination or go on.

The Master: I do not care what you do.

Mr. O'Brien: Well, I want to tell you my position, I want to be frank with you. I am going to criticise your rulings just made.

The Master: Not only these, but a good many others.

Mr. O'Brien: These and a great many others, and I want you to know my mind now. This 43143
witness has come in here this morning and offered this situation to the Court, on the proposition as to whether you could get benzol if you wanted to get it, if you needed to get it, to restore the gas going out to the consumers of this company to a 22 candle power standard; and he made the assertion that the Government took all the benzol away from 21st Street, and followed that up later by telling your Honor, or at least intimating in the answers he gave, that it was impossible for the company to get benzol.

The Master: And I am letting you cross-examine on that. But I repeat that whether he did or did not, and whatever the Ordinance Department order was about using benzol in the manufacture of munitions, it has nothing to do with it.

Q. Did you have an idea when you were speaking about benzol this morning, and the companies using benzol, to restore the 22 candles to it after it had been used for the extraction of the light oils, that there was a scarcity of benzol in the country at that time?

43145 A. All the gas, Mr. O'Brien—

The Master: I do not think you are answering the question, Mr. Addicks. Did you understand there was a scarcity of it?

The Witness: I did, so far as our plant was concerned, for the restoration of the candle power of our gas.

The Master: Mr. O'Brien wants to know whether you understood, generally speaking, that you could not get benzol?

The Witness: Yes, for the purpose for which I was asked the question.

Q. Did you mean, Mr. Addicks, to convey to the

43146 Court the idea that the Government was using benzol during that war time period and that therefore it was scarce?

A. No, I did not intend to say that. I intended to say that benzol could not have been obtained by us in the quantities necessary to restore our candle power, and in our own individual case the benzol that was in the light oil was not our property, it was the Government's property, and we had not the right to use one gallon of that benzol except under orders of the Government and by a communication from the Government taking that benzol from us.

Q. Do you recall what the provisions of the contracts were as to the benzol that might remain after the Government had used the gas?

A. Perfectly.

Q. What were they?

Mr. Ransom: Objected to as incompetent. The contracts speak for themselves.

The Master: It is cross-examination; I will allow it.

Mr. Ransom: Exception.

A. The contract provided that the tohuol should be the property of the Government, and also the benzol, 43148
the solvent naptha and the residium, which is another naphtha, should also be theirs, if they took it—and they took it.

Q. Is it not a fact that a large number of gas companies in the country refrained from entering into similar contracts with the Government because they would not be able to get rid of all the benzol that was left?

Mr. Ransom: Objected to as incompetent. The question as to what the Government did or did not do with reference to other gas companies is irrelevant.

The Master: No, I will let Mr. Addicks state 43149
as to whether he knows there were a large number of gas companies who would not make contracts because they could not get rid of the benzol that was left.

Mr. Ransom: Exception.

A. I know of no company that the Government desired to make a contract with, in regard to this, that refused to do so, your Honor.

Q. Well, are you acquainted with the subject generally outside the complainant company?

Mr. Ransom: Objected to as vague and indefinite.

Q. (Continued) With the negotiations between other gas companies and the War Department?

A. I am not acquainted with the actual negotiations between the other companies and the War Department; no, sir.

Q. What was the first move made with respect to the proposition of turning over some of the complainant's plants to the Government? Was it initiated by a letter from the complainant company to the War De-
43151 partment, or a visit of some one representing the Consolidated Gas Company to the War Department?

Mr. Ransom: Objected to. That was all gone into.

The Master: I am going to take that once more. I understood the witness to say that he got a letter from somebody, that was the first move in the situation.

Mr. Ransom: Exhibit 340.

The Master: If that was not so, and there were prior conferences, communications, talks or negotiations, I will hear it.

Mr. Ransom: Exception.

43152 A. The first that I recall is the letter of J. J. Summers, head of—I have forgotten the name of the board, whether it was the Munitions Board or not. I was requested to go in and see him.

Q. That is the first you knew of it?

A. That was the first so far as the United States Government was concerned, that I recall.

Q. You do not know whether the company had prior to that time set afoot negotiations looking toward their furnishing these facilities to the Government?

A. That is the first occasion, as I think I stated before, wherein as a result of that conference I wrote a

letter in which I said that the Consolidated Gas Company could not make a contract, but that the Westchester Lighting Company could.

Q. It is not your position, Mr. Addicks, is it, that these contracts were designed to throw over upon the consumer the expense of this process?

Mr. Ransom: Objected to. It has been fully covered, and is incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Has the complainant company in any of its executive councils ever discussed the proposition of giv- 43154
ing to the consumers of the company in money or its equivalent the difference in candle power of the gas that they received during this period?

The Master: Just one minute, Mr. Addicks. I have ruled that question out at least three times. I do not want to hear it again. If it is repeated again I will take this witness off the stand. This has got to stop, this constant repetition.

Mr. O'Brien: I am doing my duty, your Honor, you are doing yours.

The Master: You are overdoing it.

Mr. O'Brien: When you think it is time for you to take the witness off the stand, you take him 43155
off. I will preserve my rights on the record and abide by the ruling. I want an answer to that question if I can get it.

The Master: You won't get it.

Mr. O'Brien: It is a question you have got to decide, if you decide this case adequately.

The Master: It is not allowed.

Mr. Ransom: The question was answered several months ago definitely.

The Master: It has been answered half a dozen times.

43156 Walter R. Addicks, Cross.

Q. Wasn't it the understanding in the negotiations between the Government and the Public Service Commission that whatever was lost in the quality of the gas to the consumers would be made up to them?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Ransom: It was covered months ago, and is not cross-examination on the matters here brought up anyway.

The Master: I do not care what the negotiations were between the War Department and the
43157 Public Service Commission.

Mr. O'Brien: Exception. I cannot say too vehemently what my opinions are of a company that—

The Master: Do not take this speech.

(Off the record.)

Q. Was there a toluol plant established by the Government at the Central Union Gas Company?

Mr. Ransom: Objected to.

The Master: Sustained.

Mr. Ransom: It has been fully covered.

Mr. O'Brien: Exception.

Q. Was there one established at the plant of the
43158 New York Mutual Company?

Mr. Ransom: Objected to, it has been gone into months ago.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. The New Amsterdam and the Standard?

Mr. O'Brien: Exception.

The Master: I have not heard any objection; I have not made any ruling.

Mr. Ransom: Is it a question?

The Master: Do you object to it?

Mr. Ransom: If it is a question, I object to it.

The Master: Objection sustained.

Mr. Ransom: I could not recognize it as a question.

Q. What do you say, Mr. Addicks, should be the candle power of the gas at the works to produce or to provide a 22 candle power standard one mile from the Lodder?

Mr. Ransom: Objected to. That was gone over very fully with Mr. Addicks.

The Master: I will allow it. 43160

A. That would be a question that would involve each particular works. I would not set a specific figure for any particular works.

Q. You would hesitate to set a figure for 99th Street?

A. It would depend upon the time of the year and other conditions.

Q. What would you say on an average?

Mr. Ransom: Objected to. That has all been gone into before.

The Master: I will allow it again.

Mr. Ransom: Exception.

A. Well, I should say in the vicinity of 23 candle power, or better. 43161

Q. What would you say as to the Astoria plant?

Mr. Ransom: Objected to. The situation is not applicable to the Astoria plant, it being a coal gas plant, treated in the way that has been previously testified.

The Master: I will allow it. What will be the average candle power, in your opinion at the Astoria plant, if tested a mile from the works?

Mr. Ransom: Exception.

43162 Walter R. Addicks, Cross.

A. I am inclined to believe that in a mixed gas a less candle power would be necessary probably than in a water gas plant.

The Master: Somewhat less than 23?

The Witness: I think somewhat less than 23, if 23 was right in the other plant.

Q. So that you would have the 22 at a mile from the works?

A. A mile from the works. I think it would carry better, perhaps, with a mixed gas, than with the straight gas.

43163 Q. Did you set that figure at that point in the prior suit?

A. I don't recall whether I set any figure at all. I do not think Astoria was involved at all, because I don't think it was in operation.

Q. Then as to the plants then in operation, do you recall?

A. I do not recall.

Q. Do you recall what the company set that figure at in the prior suit?

A. No.

Mr. Ransom: Objected to as incompetent.

The Master: The witness has answered he

43164 don't recall.

Q. Is it not a fact that they fixed the figure at between 25 and 26 candle power at the works?

Mr. Ransom: Objected to as incompetent.

The Master: I will let Mr. Addicks say if he knows.

Mr. Ransom: He has already said he did not.

The Master: Then he will repeat it again.

Mr. Ransom: Exception.

A. As I recall the situation at that time, the gas as manufactured was subject to a fine of $1,000 for every occasion in which the—

The Master: That is not an answer, really. Did you or your company, so far as you know, in the prior suit, say that the candle power at the works was 25 or 26?

The Witness: I do not recall.

Q. What would you say as to 21st Street?

A. As to 21st Street, habitually it is necessary to carry a higher candle power than elsewhere. It is almost invariably higher than at the other plants.

Q. Why?

A. Well, I cannot clearly say why, but in reaching 22 candle power at the testing station my impression 43166
is that the candle power had to be kept higher at 21st Street than elsewhere. I cannot distinguish in my mind, however, whether that involves also running the 14th Street plant.

Q. Then you have in mind that the gas of a particular station does go to the testing station of the City?

A. In general the gas does go in certain directions. 21st Street particularly runs downtown. In particular 21st Street has a pumping main, which goes down to the lower end of the City, and it is quite definite in my mind that whatever gas is at 21st Street goes down through that main and does not go out for distribution 43167
until it gets down somewhere around New Chambers Street.

Q. Have you ever attempted to figure out just what this reason was back of the necessity of keeping the candle power at 25 to 26 at 21st Street?

The Master: Objection sustained. The witness has not made any such statement.

Mr. O'Brien: He said, as I understood it, your Honor, that he was not quite able to figure that out.

Mr. Ransom: He did not say that.

43168 Walter R. Addicks, Cross.

Q. Say what you will, Mr. Addicks. If I have got it wrong, set me right.

The Master: No, the witness need not set you right; ask another question.

Q. Doesn't it take, Mr. Addicks, three times as much oil to make water gas of 22 candle power as it does to make coal gas of 22 candle power?

The Master: We have been all over that.

Mr. Ransom: Objected to. It has been fully covered.

Mr. O'Brien: Not with this witness.

43169 The Master: Yes, we have. I will not take it.

Mr. O'Brien: You have taken a lot of testimony as to whether this gas could ever get back after the Government had gotten through with it the standard that gave it 22 candle—

(By direction the further statement was not reported.)

Mr. O'Brien: I take exception to your Honor's direction to the stenographer not to take my statement.

The Master: The stenographer will note that I have requested counsel repeatedly not to make

43170 speeches and not to make extended statements simply to make objections and take the exceptions. I am making a ruling, and I am now enforcing it, that if the counsel start to make extended speeches or statements they will not be reported.

Mr. O'Brien: What of the Master's speeches?

The Master: The Master's speeches apparently are necessary.

Mr. O'Brien: I except.

Q. Was any communication sent to the War Department after the Government had begun to extract the light oils, placing before the Government the prop-

osition of restoring 22 candles to the gas going out to consumers?

Mr. Ransom: Objected to; covered many months ago.

The Master: I will allow it again.

Mr. Ransom: Exception.

A. I will have that question again.

Q. (Read by the stenographer.)

A. I do not recall any such.

Q. Were any oral communications made to the War Department's representatives upon that subject?

A. I don't recall any such. 43172

Q. Did you ever have any negotiations yourself, orally or in writing, with the Bureau of Standards in reference to that matter?

Mr. Ransom: Objected to as incompetent and immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. How many times between 1905 and 1917 did the reserve of the complainant in your opinion go below five per cent?

The Master: I think that is already covered. He said once.

Mr. O'Brien: The inquiry was asked, as I recall, your Honor, about 1917 only. 43173

The Master: Prior to 1917 he was asked how many occasions he recalled it going below five per cent, and he mentioned one. Am I right, Mr. Addicks?

The Witness: I think the only time I mentioned it was in 1917 itself. I do not recall any other.

The Master: Was there any time prior to 1917, that you recall?

The Witness: I don't remember.

Q. Why don't you remember, Mr. Addicks; isn't

43174 Walter K. Addicks, Cross

that an important matter that we might expect you to remember?

Mr. Ransom: Objected to.

The Master: Objection sustained. I think the questioning about this five per cent reserve has been fully covered by Mr. Chambers anyhow.

Q. What have you estimated to be the entire expense of the projected work at Astoria on water gas?

The Master: The question is not allowed; it is already answered.

43175 Mr. O'Brien: As I recall it, your Honor, the witness's answer before noon, or before recess, was confined to just water gas sets.

The Master: The record will show. The matter has been sufficiently covered by Mr. Chambers anyhow.

Q. Why does the Astoria Company not enrich with oil directly the coal gas?

Mr. Ransom: Objected to as fully covered many times.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. How do you reconcile your statements today, concerning the judgment of putting in water gas sets 43176 in this projected improvement at Astoria, with your view as to coal gas, expressed in the report made by a commission or a committee of which you were a member, to the Public Service Commission for the Second District some six years ago?

Mr. Ransom: I object to that.

The Master: Objection sustained. I do not see why you hesitated so long, Mr. Ransom.

Mr. O'Brien: No, don't tremble.

The Master: It is reconcilable on its face. The report is in evidence.

Mr. Ransom: I do not want to shut out anything that appears to be in any way useful.

Q. Wasn't it your view, as expressed at that time, that with the rising price of gas oil gas companies would have to come to coal gas?

Mr. Ransom: Objected to. It has been covered previously.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Do you hold the same views now that you held at the time you signed that report?

Mr. Ransom: Objected to as incompetent. 43178

The Master: Objection sustained.

Mr. Ransom: It is not cross-examination.

Mr. O'Brien: Exception.

Q. Were your views then overruled by the Executive officers of the company in the determination to put in at this expense at Astoria the water gas sets?

Mr. Ransom: Objected to. It has been fully covered by Mr. Chambers.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Addicks, does it come within your official work to review from time to time the candle power of the gas sent out by the company's plants? 43179

Mr. Ransom: Objected to. I think that is fully covered.

The Master: I will allow it and see what comes.

Mr. Ransom: Exception.

A. That comes under the purview of the chief engineer, but I from time to time am aware of it.

Q. Just as a matter of official routine, or just for other purposes?

Mr. Ransom: Objected to.

The Master: Overruled.

Mr. Ransom: Exception.

43180 Walter R. Addicks, Cross.

A. Well, I am naturally interested. Being an engineer, I am naturally interested in matters of that kind. But the chief engineer is the responsible person.

Q. Would you say that you are in touch from year to year and month to month with the candle power tests?

A. Yes.

Q. As shown by the reports of the company?

A. Yes.

Q. Also with the pressure, records of pressure?

43181 A. Very, very seldom. I think my last time when I was in very close touch with that was in 1917 and 1918.

Q. Then we may assume that you have not gone into the violations, of the company, of the Public Service Commission's rule as to pressure in 1919?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Ransom: There is not a shred of evidence in this case, and the defendants' case is closed, indicating violations as to pressure.

The Master: The rule about speeches applies to you, too, Judge Ransom.

43182 Mr. Ransom: I realize that. I am stating an objection.

Q. Does any executive officer, superior to the chief engineer, go into the question of the pressures and the candle power tests of the gas made by the complainant company?

Mr. Ransom: Objected to. The complainant did not interrogate the witness on that.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. When you referred to the maximum send-out today, in connection with recent months, did you have

in mind the pressure of the gas at various points, as shown by the records of the company?

Mr. Ransom: Objected to.

The Master: I will take that.

A. The question is not connected in my mind, your Honor. It does not carry meaning to my mind.

The Master: That is an answer.

Q. Do you know what the pressure was in last two months?

Mr. Ransom: Objected to as not cross-examination.

The Master: In view of Mr. O'Brien's previous question, I will allow it. 43184

Mr. Ransom: Exception.

A. I cannot recall any specific instance of any particular pressure. I know of no place in the City where there is lack of pressure in accordance with the Public Service Commission requirements.

Q. Does not the pressure have a direct relation to the maximum send out?

Mr. Ransom: Objected to, not cross-examination.

The Master: I will allow it.

Mr. Ransom: I call your Honor's attention to the fact that these figures of maximum send-out were brought out by Mr. Chambers on cross-examination. 43185

The Master: That is all right, I will take it.

Mr. Ransom: Exception.

A. I do not understand that question, Mr. O'Brien.

Q. Can the pressures be manipulated to increase the maximum send-out?

A. To increase the maximum send-out?

Q. To increase the use or consumption of gas?

A. If the pressure is normally A, we will say, and it

was increased to B, which was higher than A, it would tend to increase the maximum send-out.

Q. So that if there was an increase in pressure say in the month of December, 1919, a marked increase over the same months in 1918, there would be a proportionate increase in the consumption of gas?

A. I did not say that. There might be no increase.

Q. Wouldn't that follow from what you have said before?

A. No, sir.

Q. Why?

43187 A. Because the consumers regulate the supply of gas to suit themselves, and no matter what the pressure is there might be no increase in output.

Q. The consumers do not have pressure gauges, do they, as a rule?

A. No, but they have steaks and chops and others things which they are handling in their cooking stoves, and they regulate their heats according to what they require. I do not think it is a matter of pressure with them, it is a matter of observation of the burner.

Q. Have you ever made a comparison between the pressures of 1919 and 1918?

Mr. Ransom: Objected to.

43188 The Master: I am going to stop this examination on that line. The question is not allowed, objection sustained.

The Witness: Your Honor, may I make a correction?

The Master: Yes.

The Witness: There is something way in the back of my head that tells me I have some pressure gauges, and I could not recall that I had. I do recall now that I have seen some that were produced in court, and that was the matter that was hazy in my mind at the moment, that I had seen some pressure gauges.

Q. Do you recall what they were?

A. No, I do not.

Q. Do you recall the general pressures shown by these charts?

The Master: I said I would take no more of that.

Mr. O'Brien: Well, the witness said he remembered some now.

The Master: He said he wanted to make a correction, and I did not know what it was.

Mr. O'Brien: Well, I may be able to drag something out of the back of my head. That is 43190
all.

The Master: We have had all the pressure talk we want. Any questions, Mr. Clark?

Mr. Clark: Yes, I have a few.

By Mr. Clark:

Q. Mr. Addicks, I understand that your testimony is that the 14th and 42nd Street plants are and have been necessary as reserve supply—as reserve plants for the Consolidated system.

The Master: Mr. Clark, I think we have had all the cross-examination on that subject I am going to take.

Mr. Clark: I have some pretty hot stuff here. 43191

The Master: I will hear the hot stuff for a number of questions; let us see if it is something new, now. I am going to let you ask one or two questions indicating some hot stuff and see what it is.

Q. Do you remember testifying before the Public Service Commission in case No. 2276 on March 13th, 1918, as follows: "A water gas machine may be started from a cold condition and operated by one man in a few hours. The coal gas bench requires from three weeks to six weeks to bring it to working con-

cation and requires a dozen men to operate. Water gas manufacture may be discontinued at a moment's notice and recommenced within a quarter of an hour. This is not true in any particular when coal gas manufacture is not so interrupted. It is a matter of hours, and no work can be found for the idle men in the meantime. No matter what the price of oil, water gas must be relied upon to bridge the peaks and maximums demanded today more than ever before. For steady continuous production coal gas is most satisfactory, always provided you can sell the one-half ton of coke
43193 that must be disposed of with every 10,000 feet of coal gas made." Do you remember testifying to that effect?

A. I think so.

The Master: How is that hot stuff or anything new? We had that a dozen times. Let us hear the next hot one.

Q. Mr. Addicks, is it your testimony that the 14th and 42nd Street plants were got in condition in time to serve the company in the emergency of the winter of 1917-1918?

A. Yes, I think they were, and they were got into condition in time for the largest output that we had,
43194 in 1917 and 1918.

Q. That was in February, was it not, 1918?

A. Yes. I think they were running in January. I am not sure at this time, but I think they were running in January.

Q. Do you remember testifying before the Public Service Commission on this same day in regard to that winter and the emergency of that winter, as follows: "The earliest indication of extraordinary possibilities that might have to be met, occurred on Monday, the 10th of December, 1917, when the output, the temperature having fallen 16 degrees Fahrenheit, suddenly

jumped to 128,678,000 cubic feet, an increase of 22,000,000 cubic feet over the preceding Saturday, when the temperature was 31 degrees Fahrenheit?" And later: "On Friday, December 28th, at the temperature of 22 degrees Fahrenheit, maximum output of December 10th was slightly exceeded, being 129,417,000 cubic feet. There followed the most extraordinary week in the gas industry of New York, and likewise throughout the United States, within the knowledge of the present generation. On Saturday morning the prediction of a cold wave of great severity made by the Weather Bureau, had been noted by the 43196
officers of the company and the manufacturing department's attention was called to it. The output on Saturday suddenly dropped to 143,676,000 cubic feet, or 25,548,000 cubic feet greater than the maximum previous to December, 1911, and it was followed on Sunday by 142,165,000 cubic feet. On the same day in 1916, it had been 96,264,000 cubic feet."

Then you go on giving the amounts in cubic feet on each day of that week, all of which are very high.

The Master: It seems to me this is cold instead of hot.

Mr. Clark: Wait until I get to it.

Q. (Continued.) "On Sunday, December 30th the 43197
officers called up the Public Service Commission and informed them of the conditions, and stated that they would be compelled to make all the coal gas possible, irrespective of the effect it might have on the candle power. This was followed by arrangements made with the contractor to furnish at once 288 skilled and unskilled workmen and the firing up of every coal gas bench at 14th Street and 42nd Street, so during the shortage of coal there was not at either plant more than five days' supply of coal running at full capacity."

The Master: We have had enough of that hot stuff. Do you remember testifying to this?

A. It sounds very familiar. I do not remember the exact number of millions each day.

The Master: It is substantially correct?

The Witness: It is substantially correct, yes, sir.

The Master: We have had enough of this.

Mr. Clark: I have one other thing.

Q. On the same day, do you remember testifying: "I would like to say that it is rather interesting. To start 42nd Street and 14th Street we had to do everything in a hurry and we had to get contractors and get
431[99] the men in as best we could and, taking the gas made in January, it is interesting to note it cost 12.6 a thousand for that contractor's labor, in addition to 9.6 a thousand on our own part, that is not including any materials whatever, and in February it cost 56.6 a thousand and 8.9 a thousand for our own labor, making it quite a large sum for labor alone." Do you remember so testifying?

A. I do not remember the figures, but I remember generally testifying along those lines.

The Master: Anything else, Mr. Chambers, at this time?

Mr. Chambers: By me?

432[00] The Master: Yes.

Mr. Chambers: Well, I have got to check up those—

The Master: Have you anything else?

Mr. Chambers: Yes, I have, but you won't let me ask it. I would like to continue the cross-examination.

Mr. Ransom: I have two or three questions.

RE-DIRECT EXAMINATION BY MR. RANSOM:

Q. Mr. Addicks, these communications from the War Department, about which Mr. Chambers examined you, were communications which were received by the company on or about the dates thereon shown?

A. Yes, sir.

Q. Various of them were received by you personally, and bear the stamp mark of your office, showing the date and time received?

A. I used a time stamp at that time.

Q. And these are the originals?

A. Yes, sir.

Mr. Ransom: I offer them in evidence.

The Master: Offer one at a time.

Mr. Clark: I object to them.

Mr. Ransom: The first is the one of April 12, 1918. 43202

Mr. Clark: I object to them as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Clark: Exception.

Same marked Complainant's Exhibit No. 489.

Mr. Ransom: I offer the one of May 21, 1918.

Mr. Clark: Same objection.

Mr. Chambers: I will object to them all as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Exception.

Mr. Clark: Exception.

Same marked Complainant's Exhibit No. 490. 43203

Mr. Ransom: The one of June 5, 1918.

Same marked Complainant's Exhibit No. 491.

Mr. Ransom: The next of August 31, 1918.

Same marked Complainant's Exhibit No. 492.

Mr. Ransom: The next April 8, 1918.

Same marked Complainant's Exhibit No. 493.

Q. Mr. Addicks, referring to the mains by-passed and so exposed during subway construction has it been your experience and the experience of the company that in summer as well as in winter candle power may be adversely affected by sharp and sudden changes in the outside temperature?

A. Yes.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper re-direct.

The Master: Overruled. You brought out on cross the effect of heat on the gas, and I am going to let this question be answered.

Mr. Chambers: I beg your pardon, Mr. Ransom brought that out. I cross-examined about it.

The Master: I have made my ruling.

43205 Mr. Chambers: Exception.

Mr. O'Brien: Exception.

Q. Have you since you were on the stand this morning refreshed your recollection so as to be able to state the time when during 1919 the 14th and 42nd Street plants were put under fire in anticipation of the winter requirements?

A. I think they were sometime in the middle of December.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: 1919?

The Witness: Yes, sir.

43206 The Master: For this present winter spell?

The Witness: Yes, sir.

Mr. O'Brien: Your Honor is receiving this on the subject of used and useful?

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial. It may appear that it was done before they closed their case.

Q. About December 15th?

A. Yes, that is the best of my memory.

Mr. Chambers: That is before they closed their case.

Mr. Ransom: Not before Mr. Hine testified.

Mr. Chambers: It is not rebuttal.

The Master: Yes, it is.

Q. Is the fact that it requires time to get a coal gas plant fired up and in operation the reason why you do put that plant under fire in advance of the time when your maximum day's requirements in winter usually take place?

Mr. Chambers: I object to that as being argumentative and suggesting the answer, and incompetent.

The Master: I think it is somewhat argumentative, but I think it is fully covered, and it cannot do any harm. I will let the witness answer. 43208

Mr. Chambers: It suggests the answer.

The Master: Yes, I think it does.

Mr. Chambers: And puts the answer in the witness's mouth.

A. Yes, but the wide latitude I have been given in the testimony that has been quoted was because of the condition of the plant at the time, as to the periods necessary to fire up, the shorter time being when the setting is an old setting and has not been renewed, but when the setting has been renewed and new setting put in since it was fired up the last time, a longer period of time is desirable to dry out the brickwork. 43209

Mr. O'Brien: Is that what you call green benches?

The Witness: Green benches, yes.

Q. The 21st Street gas, you say, does go down across 14th Street to some points below Canal Street before it goes into the distribution system?

Mr. Chambers: I object on the ground it now appears they do not know where the gas goes to or where it comes from.

43210 Walter R. Addicks, Redirect.

The Master: It has been answered. The witness has testified to that.

Mr. Ransom: Do you sustain the objection?

The Master: I sustain the objection because the witness has already made the statement.

Q. Mr. Addicks, Mr. Little, a witness for the defendants, testified upon the trial of this case, pages 10,286 and 10,287 of the mimeograph record, that in his judgment where the 22 candle power standard was in force the 75 and 25 per cent ratio between coal gas and water gas manufacture would not go, that
43211 the ratio had to be something like 50 and 50, and that it was a misguided policy for a company to tie itself up to one system of manufacture, and that this had been proved. Do you agree or disagree with that opinion of the witness for the defendants?

Mr. Chambers: I object to that.

The Master: I think it is pretty late to start that now.

Mr. Ransom: I will withdraw it if your Honor feels that way about it.

The Master: I am very clear in my mind that the rule must be that unless I am able to reach a conclusion that the trustees of this company
43212 have not honestly exercised discretion and judgment I can not and the Court can not substitute its judgment for the judgment and discretion of the trustees of a corporation of this kind, honestly exercised—even though a witness, no matter how competent or capable he may be, may be of some other opinion. That is my view of it at this time.

Mr. O'Brien: I disagree with your Honor. I think you are thinking about mandamus now, as applied to a public official.

Mr. Chambers: I except to your Honor's viewpoint on that.

Mr. Ransom: That is all.

Mr. Clark: Might I ask a question?

RE-CROSS EXAMINATION BY MR. CLARK:

Q. Mr. Addicks, what was the immediate cause of firing up the 14th and 42nd Street plants in December of 1919; wasn't it the cold snap that occurred at that time?

A. No, it was in the usual course, to have the 14th and 42nd Street plants ready for service.

Q. As a matter of fact, you had an unusually cold 43214
day right in the middle of December, 1919, didn't you, the highest peak of the year came in December?

A. Well, it may have come in December, but at the same time I do not think that had any reference to firing up.

Q. At the same time that you fired up these plants?

A. I do not think it had any reference to firing these plants. I do not recall.

Q. You would not say it did not?

A. I do not connect that day with the firing of the plants.

Q. But you would not say that it did not have.

Mr. Ransom: I object to the question. 43215

The Master: I will allow it. I will let Mr. Addicks say whether he fired up the plant because it got cold that day.

A. I think the plant would have been fired up whether it was cold or not that day.

Q. It is a fact, though, there was an unusually cold day in the middle of December and you had an unusually large output?

A. We had a large output in December, I remember that, but I do not remember what day it was.

43216 James F. Hunter, Direct.

James F. Hunter, called as a witness on behalf of the defendants in rebuttal, being duly sworn, testified as follows:

Direct-examination by Mr. Ransom:

Q. You are assistant engineer of construction of the Consolidated Gas Company?

A. Yes, sir.

Q. How long have you been such?

A. Ten or eleven years.

Q. Are you familiar with gas manufacturing plants
43217 within the City of New York, their construction and use?

A. Yes, sir.

Q. Are you and have you been for some time generally familiar with what is known as the Nassau works of the Brooklyn Union Company?

A. Yes, sir, as other plants.

Q. What kind of a plant is it?

A. Water gas plant.

Mr. O'Brien: Just a minute, your Honor—

The Master: What has that got to do with this case?

Mr. Ransom: It has a great deal to do with
43218 it.

Mr. Chambers: It is not rebuttal and I object to it.

Mr. Ransom: On the question of reserve capacity, what reserve capacity is needed. Here is an instance that has happened right within the trial of this case, whereby one of the biggest plants of the City—

The Master: You are going to prove this fire last night?

Mr. Ransom: And the effect that it had.

The Master: Go ahead.

Mr. O'Brien: I don't see how you are going to Cuba now.

Mr. Chambers: This is not rebuttal.

The Master: Yes, it is.

Q. How large a plant is it, what capacity?

A. I should say about eighteen million.

Mr. Chambers: I object to that upon the ground it is incompetent, irrelevant and immaterial and not rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: On the further ground that the 43220
witness is not qualified, has not shown himself qualified to give hypothetical answers to hypothetical questions.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: You said about eighteen million?

The Witness: About eighteen million.

Q. This plant covers a whole city block on the East River front?

Mr. O'Brien: I object to that as leading.

Mr. Chambers: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception. 43221

Mr. O'Brien: Exception.

A. Part of a city block, I could not say how much.

Q. On the East River?

A. It is right on the river.

Q. At Kent Avenue?

A. I can't tell you that.

Q. Have you seen that plant in operation at times before?

A. Yes, sir.

Q. Did you visit that plant today?

A. Yes, sir.

43222 James F. Hunter, Direct.

Q. Was it operating?

A. Part of it.

Q. What time were you there?

A. Between 1:30 and 2 o'clock.

Mr. Chambers: This is all over my objection and exception.

The Master: Yes.

Q. What part of it was operating?

A. Two machines.

Q. Water gas machines?

A. Yes, sir.

43223 The Master: Out of how many?

The Witness: Six were not operating.

Mr. O'Brien: We will have to come in tomorrow and put on a witness and take up your time and string this case along and tell you that they had light last night in Brooklyn, that every sleeper in that lodging house had all the light he needed.

The Master: Go on.

Q. What did you find as to the non-operation of the part of the plant which you have described?

Mr. O'Brien: I object to that as leading.

Mr. Chambers: I object.

43224 The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

A. It was interfered with by the fire that occurred last night.

Mr. Chambers: I move to strike the answer out as a conclusion.

The Master: Motion denied.

Mr. Chambers: Exception.

Q. Did you go over the plant?

A. Yes.

Q. What did you find as to the physical condition resulting from the fire?

Mr. O'Brien: I think that is altogether too vague and too general.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: How close to the plant of the Brooklyn Union Gas was the fire?

The Witness: Right in the plant.

The Master: There was a fire in the plant?

The Witness: A fire in the plant.

The Master: What part of it caught fire?

The Witness: The auxiliary tank used for the separation of the water from the oil pumped 43226
from the street mains.

Q. Drip oil?

A. Yes, sir.

The Master: Was the fire out today?

The Witness: The fire was out.

Q. What did you find as to the physical condition resulting from the fire. First, you went over the plant with Mr. Bush?

A. Yes, sir.

Q. Who is he?

A. Engineer of manufacture of the Brooklyn Union Gas Company.

Q. What did you find? 43227

A. I found the general wreck that is natural from a fire, the oil from this tank had been floated out of the tank by the water put in by the Fire Department, and it spread all over the adjoining ground and had gone down into the submerged pump chamber right adjoining the tank, and at the time I saw it—there were two tiers of pumps in this chamber—the lower tier of pumps was still partially submerged. The upper tier had been cleared and they had gotten one of them operating. The pipe lines in the vicinity of the tank were broken and destroyed, some of them

frozen you could see the ice hanging from them, and generally the plant, that portion of it was in very, very bad shape.

Mr. Chambers: I move to strike that out.

The Master: Yes, I think I had better strike out that it was in very bad shape.

Q. Had there been an explosion of oil in connection with the fire or some explosion?

A. Not that I know of.

Q. The entire plant had at first been shut down on account of this—

43229 The Master: No, no, I can't let you do that. By the Master:

Q. You said six machines were shut down and two were running?

A. Yes.

Q. Do I understand your testimony to be that these six were shut down because of the fire condition that you have described?

A. Yes, sir.

Q. What was it about the fire that interfered with the operation of these machines?

A. All the pipe lines, steam lines, water lines, oil lines, were shut off and broken on account of the

43230 fire

The Master: Leading to these six machines?

The Witness: Leading to the plant, yes.

The Master: And which would be needed in operating those six machines?

The Witness: Yes.

The Master: How long will it take in your judgment to fix it up?

The Witness: I should say that by midnight they might get running, somewhere about midnight.

Q. For twelve hours were all the machines out?

A. All the machines were out from 12:30 A. M. to—

The Master: I don't think I can take Mr. Hunter's statement on that.

Mr. O'Brien: Would you say they were running at two o'clock today?

The Witness: Two machines were.

Mr. O'Brien: Were you here at two o'clock?

The Witness: Yes, sir.

The Master: It would have been better to have had a Brooklyn Union man's testimony.

The Witness: You couldn't get them, they are 43232
snowed under, a man would not leave the plant for love or money.

Q. Did you ascertain what had been done as to gas in the storage holders at the time of the fire?

The Master: No, I can't take that. I don't think you can get any more from Mr. Hunter. He has described the fire condition, and I think it is illuminating on the question of fire in gas plants in the light of all sorts of theoretical opinions as to what will or will not happen in a gas plant, and what chance there is in a gas plant for fire. I think it is useful to have this testimony that fires do happen in gas plants and 43233
what did happen in this case.

Q. Did you observe the condition of the storage holders when there this afternoon?

A. Storage holders at the plant?

Q. Yes.

A. No, I did not.

Mr. Ransom: That is all.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Hunter, did you go around and visit any of the other manufacturing plants of the Brooklyn Union system?

A. Today?

Q. Yes.

A. No.

Q. That is a great big system, isn't it?

A. It is a big system, yes.

Q. How many manufacturing plants have they got, to your knowledge?

A. Three outside of this one.

Q. Out of the three there were some little accident here to this one?

A. A good big accident, put it out of business.

Q. For twelve hours?

43235 A. Twelve hours, entirely out of business.

Q. Well, you said two of them were still going?

A. No, I said for twelve hours the whole plant was out, and just shortly before I got there they succeeded in starting two of the machines.

Q. And you say the other four will be going tonight?

A. I said the other six machines might possibly be got going by twelve o'clock tonight.

Q. Did I understand you right that there are three other manufacturing plants beside this one, or two others?

A. Three others.

43236 Q. In other parts of the City?

A. Yes, sir.

Q. And holders scattered around?

A. Yes, sir.

Q. You said you didn't know anything about whether the holders were full or not?

A. No, I said I didn't know about that, but Mr. Bush said if they didn't get going they would be out of gas tonight.

Mr. Chambers: No, I don't want you to make any speeches. I move to strike that out.

The Master: I will have to strike out the statement that Mr. Bush made as not responsive.

Mr. Ransom: Exception.

Q. You don't know, you said?

A. At that plant.

Q. Where was the accident, exactly, I don't understand, where was the fire?

A. The fire was in the drip oil tank, practically in the center of the plant.

Q. The drip oil tank got on fire?

A. Yes, sir.

Q. So you are informed. I suppose you don't know positively?

A. I saw the tank after it had been destroyed. 43238

Q. You don't know what caused the fire?

A. I used my eyes, and can generally see what a fire—

Q. But you don't know what caused the fire, the ignition?

A. No, nobody does.

Q. You don't know what it was for, do you?

The Master: He has answered that he doesn't know, he was not there. He could guess, probably, and if you press him long enough he will give you a guess.

Q. Is coal or water gas manufactured there?

A. Water gas?

Q. Entirely? 43239

A. Yes.

Q. And these were water gas machines?

A. Water gas machines.

Q. Did anything happen to the machines themselves?

A. No.

Q. The only trouble was with some of the pipe connections?

A. The oil supply lines were destroyed.

Q. You mean crude oil lines?

A. The gas oil to the machines.

Q. Those lines were interfered with because of the fire?

A. Yes.

The Master: He said they were destroyed.

The Witness: They were destroyed.

Q. All of them?

A. No, there was one small line that they were using on the two machines in operation.

Q. Didn't they shut down largely by reason of precaution?

43241 A. Yes, it got too hot, they couldn't work, they were afraid to work.

Q. So that as soon as it cooled off they could get at it?

A. As soon as it cooled off and they got the line thawed out so they could put on the two machines they were operating they started up.

Q. So that when you got all through the only damage done was to that tank and to the pipes?

A. And the loss of gas supply to the City.

Q. Where did they lose any gas?

A. Well, they didn't make it.

Q. You don't mean they lost any gas?

43242 A. They lost the capacity of the plant for twelve hours.

Q. You don't know anything about whether they needed it or not, you said you didn't know what the condition of the holders was?

A. I don't say whether they needed it or not, I say they lost the capacity of the plant for twelve hours.

Q. You don't mean they lost gas?

A. They lost the capacity to make gas, as far as consumers are concerned they lost the gas.

Q. You don't know whether they were running

those machines right along, do you, of your own knowledge?

A. No.

Mr. Chambers: That is all.

By Mr. O'Brien:

Q. Mr. Hunter, do you know whether Mr. Alrich was in Brooklyn last night?

A. I do not.

Mr. O'Brien: Your Honor, I will reserve further questioning of the witness until I have had a chance to inspect the fire.

The Master: No, you won't do that. Have 43244
you anything else to ask?

Mr. O'Brien: I will ask to have him recalled after we—

The Master: No, I won't do it. Is there anything else you want to ask him?

Q. Do you know the locations of the other plants?

A. Generally.

Q. Gowanus Bay?

A. They are on Gowanus Canal, two of them.

Q. And the Erie Basin?

A. I don't know about the Erie Basin.

Q. Don't you know they have a plant there?

A. I know they have three plants; I don't know 43245
just where they are.

Q. Williamsburg?

A. Well, there are four plants in the system.

Q. Do you know what the capacity is?

A. I know what the total capacity is.

Q. Do you know how many subsidiaries this company has?

A. No, sir.

Q. Do you know how much the whole capacity of the subsidiaries is?

A. I do not.

The Master: I will assume they have a large reserve holder capacity.

Q. Don't you know that they have six plants in Brooklyn?

A. I do not.

Q. I call your attention to Case No. 2276 and ask you to read this paragraph on Brooklyn Union Gas system, and see if that refreshes your memory?

The Master: Before you answer, Mr. Hunter, I want you to hear something from me. Read that first. Does that refresh your recollection

43247 or your memory at all?

The Witness: I don't know that it does. I am not familiar with the system of the Brooklyn Union Company. I never had occasion to investigate it.

The Master: All you know about it is what you have read?

The Witness: That is all.

Q. How long did you spend over there?

A. Long enough to go through the plant and see that the plant was shut down.

Q. Tell me how long?

A. About half an hour.

43248 Q. Fully half an hour?

A. I should say so.

Q. Didn't you have hard work to get lunch and get back over here?

A. I had my lunch before I started.

Q. You made sure of that?

A. Yes.

Q. Would you say you were there longer than fifteen minutes.

A. I was there longer than fifteen minutes.

By Mr. Clark:

Q. Are you an operating man of the Gas Company?

A. I am a construction man.

Q. Do you know anything about the operation of a gas plant?

A. Yes.

Q. Did you examine these machines carefully?

A. I did.

Q. Were any of them taken down to be recheckered?

A. Not apparently so. 43250

Q. Did you examine carefully?

A. I examined them enough to see that there were no checker brick lying around and no evidences of a recheckering machine. Usually it is very evident when a machine is being recheckered.

Q. Did you examine the pipes carefully?

A. Which pipes?

Q. That you say were broken?

A. I did.

Q. Where did they run from?

A. They ran by this tank where the fire occurred, through a little alleyway there.

Q. From where? 43251

A. I did not follow them to their source nor to their destination, but there was this group of pipes running through this little alleyway.

Q. How do you know they were oil pipes?

A. You can tell an oil pipe, it usually leaks, it seeps oil. An oil pipe is very easily distinguished. It is the hardest thing to hold there is.

Q. Can you say that there weren't any oil pipes except in this one alley?

A. I could not, they might have them underground, I don't know.

43252 James F. Hunter, Cross.

Q. There may have been underground oil pipes that still served the machines, as far as you know?

A. Yes.

Q. Has the Consolidated Gas Company any drip oil tanks placed similarly to this one in the Brooklyn Union?

A. No, sir, not that I am aware of.

Q. Was this oil tank near these gas oil pipes?

A. Right alongside of it, yes, sir, within three feet of it.

Q. There is no similar situation in any of the Con-
43253 solidated Company's plants?

A. Not that I recall at this time.

Mr. Clark: That is all.

By Mr. Ransom:

Q. Do you know if this is the largest of the plants of the Brooklyn Union system?

A. I don't know.

(Witness excused.)

Mr. Ransom: In view of the proofs submitted by the defendants, I now offer in evidence certified copy of the resolution and order of the Public Service Commission in Case No. 1717, Matter of the Application of the Astoria Light,
43254 Heat & Power Company, under Section 69 of the Public Service Commission law for an order authorizing the issuance of certain bonds and stock for capital purposes. This was previously marked for identification as Plaintiff's Exhibit 410 at page 8820 of the printed record, but your Honor ruled at that time, as you said, in view of the fact that the defendants had made objections to going into the Astoria situation, and those objections had at that time been sustained, you sustained the objection to the offering of this order.

43255

Mr. Chambers: I don't quite understand what is going on here. Why don't you offer in evidence the nineteen million dollar petition of the Consolidated? That is the one we are interested in. If he will substitute the one Mr. O'Brien offered for this, we won't object.

Mr. Ransom: I shall also offer with it Complainant's Exhibit 411 for identification, the opinion of the Commission at that time.

This is offered in view of the defendants' proofs as bearing upon the question of the Astoria investment, because the opinion and order show, in the first place, that the petition allowed 43256
the capitalization of the investment in plant to that extent.

The Master: What are you offering now?

Mr. Ransom: I am offering the opinions of Williams, Commissioner, and McCall, Commissioner.

The Master: On pages 124, 125, 126—

Mr. Ransom: The McCall opinion is on pages 126 and 127 and part of page 128; the Williams opinion begins at page 124 and runs through to the beginning of the McCall opinion on page 126. I call your Honor's attention particularly to the fact that the Commission, the engineer of 43257
the Commission submitted a report showing that he had examined 75 per cent of the expenditures, had examined them at random—

Mr. O'Brien: Don't read that into the record when you know the Master has not passed on it.

The Master: Well, I see Mr. Maltbie made an opinion here, too.

Mr. Ransom: A dissenting opinion.

Mr. Chambers: You had better put that in.

The Master: Well, you can offer that.

43258

Mr. Chambers: I am going to object to the whole thing as incompetent. I object to this order in the matter of the Astoria Light, Heat & Power Company upon the ground that it is incompetent, irrelevant and immaterial, has no bearing on the issues in this case, and the order itself specifically states that as to some of the money to be procured by the issuance of bonds it is for the purpose of refunding or discharging certain obligations of the company. That was not a rate case and had nothing to do with rates.

Mr. Ransom: May I clear up that one point?

43259 The capital expenditures for that purpose, the short term notes, as they called them, I believe had been first issued, and this involved the permanent capitalization of the same expenditures.

Mr. Chambers: I add to the grounds of my objection that it is not proper rebuttal testimony.

Mr O'Brien: I assume that this is offered as having some bearing on the valuation of the plant of the Astoria Company.

The Master: Yes.

Mr O'Brien: The Courts have completely disregarded and discarded such evidence. A perusal

43260 of any of the decisions in the rate cases will show that they pay no attention to it at all.

The Master: Don't argue. Your objection is that it is incompetent, irrelevant and immaterial?

Mr. O'Brien: Yes.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Paper received in evidence and marked as Complainant's Exhibit 410

The Master: Now, you are offering Complainant's Exhibit 411 for identification?

Mr. Ransom: Yes, the McCall and Williams opinions.

The Master: The same objections are made, I suppose.

Mr. Chambers: Yes.

The Master: It will be received and exceptions allowed.

Paper received in evidence and marked Complainant's Exhibit 411.

43262

H. Warren Terry, Jr., recalled:

Direct-examination by Mr. Ransom:

Q. Mr. Terry, when you were on the stand this morning you were asked by Major Clark—

Mr. Chambers: I understood him to say he was through with this witness.

The Master: Let me hear the question.

Q. You were asked by Major Clark to recompute the observed data on the test sheet, 79th Street, Branch 3. 12/18/19. 11 A. M., Hirschewitz, on which the candle power certified to the City was 20.68, and the candle power computed by you and shown 43263
in the complainant's tabulation, was 20.8. You in your computation on the stand reached a figure of 18 something?

A. 18.89.

Q. Have you since gone over your computation and found that you used an incorrect logarithm on the stand?

A. I did.

Q. And upon going over the matter have you found that your original computation was correct?

A. Yes, sir.

43264 H. Warren Terry, Jr., Cross.

The Master: You made a mistake when you were computing it here today?

The Witness: Yes.

Mr. Ransom: That is all.

Cross-examination by Mr. Clark:

Q. Will you recompute it now?

The Master: No, don't let us waste any time on this.

By Mr. O'Brien:

Q. How many men did you have assisting you in this figuring?

43265 The Master: I think we have had that.

Mr. O'Brien: I didn't have a chance at this witness. I want to make Mr. Terry's acquaintance. I would like to have him tell us how many minutes it took in the computation, and then I will let the witness go.

The Master: The record shows that the witness in court, undisturbed, made an error in his computation by using the wrong logarithm. Now, Judge Ransom has called him back to accentuate it.

Mr. Ransom: To confirm his original computation.

43266 Mr. Clark: I except to your Honor's ruling that he should not refigure that. He would not have gotten it the same.

(Witness excused.)

Mr. Ransom: I propose to read from the record of the prior suit the testimony of Colin C. Simpson, called in rebuttal on behalf of the complainant, printed page 3861, in the Supreme Court record, page 5417 in the Circuit Court record, with respect to the appraisal, so-called, put in evidence in this case and in the prior case by Mr. Edgerton.

43267

Mr. Chambers: I object to that.

The Master: Isn't all of Simpson's testimony in?

Mr. Ransom: Not his rebuttal testimony. He was called as a witness in the prior suit after Mr. Edgerton had put in his testimony.

The Master: I thought all of the Simpson testimony in the prior suit was read in.

Mr. Ransom: I stated at the time that only his testimony on direct was being read.

Mr. O'Brien: We were all under the impression that Mr. Simpson's testimony was all in. At any rate, I will move again now to strike out 43268 from the record the testimony of the witness Mayer and the witness Simpson and the witness Price.

Mr. Ransom: I stated on the record at the time that I was reading all of the testimony of the witness Simpson upon the direct and that I was not at that time reading Mr. Simpson's testimony in rebuttal.

Mr. Chambers: I am going to object to it on the ground that it is not proper rebuttal. They knew about this testimony when they were presenting their main case. It is incompetent, irrelevant and immaterial, and that case was not 43269 between the same parties and the parties here.

Mr. Ransom: Mr. Edgerton's values or lack of values, which he put upon the property were introduced into this case for the first time by the defendant in the course of their direct case.

Mr. O'Brien: We are certainly going to have a ridiculous record for the Supreme Court, if you are going to wave that magic wand, at different places in this case, and bring the dead in. Sir Oliver Lodge isn't in it if that goes through.

43270 The Master: Which part do you claim rebuts Mr. Edgerton's testimony?

Mr. Ransom: The only way in which this complainant has or can possibly have to rebut his testimony on the values in 1906, and that took place at that time with regard to it, would be by putting in the rebuttal testimony which was at that time offered.

The Master: Read the first question that you want to read from Mr. Simpson's testimony on the former trial.

Mr Ransom: I read from page 3889:

43271 "Now, having disposed of Mr. Marks, or, rather, his testimony, let us look at Mr. Edgerton's testimony for a few moments. The testimony to which I am directing particular attention begins at page 4033, with regard to the depth of mains, pages 4033 to 4035. Mr. Edgerton says that he has found a shallow main a preventative of trouble in services rather than adding to it. Have you had any such experience as that a shallow main prevents trouble with services?"

The Master: The objection is sustained on the ground that Mr. Edgerton gave no such testimony in this case.

43272 Mr. Ransom: I read from page 5463 of the Circuit Court record, page 3890 of the Supreme Court record:

"Q. What is the cover at which the mains are laid in Manhattan, if possible?"

Mr. Chambers: I object to that as not proper rebuttal.

The Master: That question I will allow. What is the answer?

Mr. Clark: I object on the ground that anybody can testify to that.

43273

Mr. Chambers: I object that these are not the same parties, this is not a new trial of that action, sufficiently to permit the reading of the testimony of the dead, and it is incompetent, irrelevant and immaterial.

Mr. Ransom: I will withdraw that question at this time. Page 5517 of the Circuit Court record, page 3926 of the Supreme Court record:

"Q. Now, have you taken Mr. Edgerton's estimate of the total cost of reproduction or replacing the mains of the Consolidated Gas Company as given on page 4065, to wit, $8,919,792.55, and made additions to his calculation of the items in which he has erred 43274
or which he has left out?"

Mr. Chambers: I object to the form of the question and also on the ground that it is incompetent, irrelevant, immaterial and not proper rebuttal, secondary and hearsay evidence, and that this action on trial now is not a retrial or a new trial of the action which was being tried at the time that testimony was given by the witness.

Mr. O'Brien: I make the same objections, and I further add the ground that if in theory this is a continuation of the old trial, then Judge Mayer was disqualified from making the appointment of the Master in this case, and Mr. Lacombe was 43275
disqualified from appearing as counsel, acting as counsel in the case.

On the ground further that the rebuttal may be had by taking somebody alive who was acquainted with the conditions as of that period.

On the further ground that the figures that they are now seeking to controvert through the alleged rebuttal of the deceased Simpson, were not the figures of Mr. Edgerton.

Mr. Ransom: These are the figures which Mr.

43276 Edgerton gave, and Mr. Edgerton made up a table which was received in evidence.

The Master: Are these the same figures?

Mr. Ransom: Yes.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: Exception. There is a deduction of the pavement over mains.

The Master: I know, but he gave those figures and I will take the answer given at that time.

Mr. O'Brien: Exception.

43277 "A. Yes, sir.

"Q. Is that it?

"A. Yes, sir, it is as follows:

43278

"Mr. Edgerton's estimate of the total cost of reproducing or replacing the mains of the Consol. Gas Co. is given as (p. 4066) $8,919,792.55

"The following items, on which he has made no calculation, should be included:

Difference in pipe weights as estimated and as actually used	$393,491.13	
Plus 10 per cent for special wastage, etc., as calculated by Mr. Edgerton	39,349.11	$432,840.24
Difference in asphalt pavements on both price and width	$1,824,754.66	
Difference in earth excavation on price, width and depth	1,033,295.20	
Value of sheathing left in trench, and labor at $8.75 per M ft. B. M.	50,505.82	
Value of blocking and wedges	40,784.17	
Difference in lead actually used and as calculated, both price and amount	147,220.90	
Cost of sheathing trenches, 10% of mileage under 12", 50% over 12"	314,012.56	
Difference in cost of laying and caulking, actual as against estimated	225,522.91	
Cost of bridging	30,000.00	
Cost of carting and dumping rock	74,252.00	$3,740,348.22
		$4,173,188.46
To which is added ten per cent for engineering supervision and expense, cost of City inspection, interest on and wear and tear of tools and plant, possibilities of obstruction on streets which would delay the work, serious obstruction met with underground, including sub-surface structures, clerical expense, suits for damages and other undistributed expenses	417,318.85	$4,590,507.31
		$13,510,299.86"

43282 Mr. O'Brien: Just a minute. In putting that table in, I think it is proper for me to call your attention to another dangerous feature by letting that in, and that is this: Mr. Edgerton was submitted and has been cross-examined, and I contend that even if it were proper to bring up the testimony of this dead man they would have to elect whether they are going to stand upon the rebuttal in the old case as it is there in the record, or present new rebuttal. They cannot do both.

43283 A further objection to it is this, that you cannot do justice to the situation unless you take all of the surrounding conditions under which it was given, in other words, take the whole examination in, because if you take one or two questions isolated, it is not the record as he testified. Now, you can't take the whole of it because it is not admissible. Therefore, it has to go out.

The Master: Objection overruled.

Mr. O'Brien: Exception. I make the further and third additional objection upon the ground that the Master has declared several times that he is going to rule out all this testimony of Mayer and Simpson and Price, de-

43284 ceased, and therefore it is a waste of time to read this into the record, and take up our attention with it.

The Master: Objection overruled.

Mr. O'Brien: Exception.

"Q. And making these corrections, the cost of the reproduction of the mains instead of $8,919,792.55 would be how much?

"A. $13,510,299.86.

43285

"Q. And that is nearly a million dollars more than your estimated cost of reproduction?

"A. $900,000 more.

"Q. That includes however the cost of carting and dumping and carting at $2.14 instead of your cost of carting and dumping at $1, and some other errors, which would reduce the total?

"A. Yes, sir, and possible underestimates on my part.

"Q. You mean in making up your total of $12,056,000 for reproduction?

"A. Yes, sir, and in a good many cases I have been too conservative."

43286

Mr. Ransom: I read from the testimony of Frederick J. Mayer, recalled by complainant's counsel in rebuttal, direct-examination by Mr. Mathewson, page 6568 of the Circuit Court record and page 4587 of the printed record in the Supreme Court:

"Q. Referring now to Mr. Edgerton's estimate of value of plant less depreciation $9,367,344.25, do you find that he computed his three per cent for engineering and superintendence on the original cost of the plant new or on the value of the plant after you have taken out depreciation?"

43287

Mr. Chambers: Just a minute.

The Master: I suppose the objection is the same as to the Simpson testimony.

Mr. Chambers: Yes.

The Master: I am taking this over the same objections and exceptions as in the case of the other testimony.

Mr. Chambers: Exception.

"A. After depreciation was taken out.

"Q. Is that in your judgment a proper way to compute the engineering expenses?"

43,288

Mr. O'Brien: That would be objectionable anyway.

The Master: Objection overruled.

Mr. O'Brien: Exception.

"A. It is not.

"Q. Why not?

"A. Because no depreciation exists when you make your estimate originally. You estimate on a new plant, to which ten per cent for general engineering is to be charged."

Mr. O'Brien: I object to this on the ground that the position taken by Mr. Mayer at that time

43,289 has been overruled by the United States Supreme Court in every rate case since.

The Master: Objection overruled.

Mr. O'Brien: Exception.

"Q. Well, what have you to say as to the sufficiency of three per cent according to your experience and knowledge, to cover the general expenses for engineering and superintendence and the other items which are not included in the amount paid to the contractor?

"A. The actual expense is nearer 15 per cent than 10 per cent; in some instances the grading consists of the removal of 20 to 25 feet of earth on top of the original ground before you get the surface for the

43,290 foundation.

"Q. Now, Mr. Edgerton has also employed 4 per cent as the amount allowable or interest. Do you find that he has also computed the 4 per cent on the depreciated value of the plant instead of the original value?

"A. Yes, sir.

"Q. Is that a correct method of procedure?

"A. It is not for the same reason that the engineering charges are not chargeable on that basis.

43201

"Q. Mr. Edgerton stated he allowed 4 per cent because he thought that a somewhat shorter period than 2 years might be required to construct these plants, if they were to be constructed. What is your judgment as to the period required being less than two years?

"A. I know it cannot be done in less than two years.

"Q. You observe that Mr. Edgerton, in comparing his values of depreciated plants, placed only value on apparatus after depreciation was taken, or value on depreciated apparatus in many instances, did you not?

"A. Yes, in many instances.

43202

"Q. But coming to the valuation of the plant now upon Mr. Edgerton's basis, have you made a computation adding in the original cost of apparatus as given by him, or the valuation of these items new, where he has accepted your valuation?

"A. I have.

"Q. And will you state what that would make his valuation upon his own basis?

"A. The second column there I think, that is excluding the omission—

"Q. Excluding the omission—

"A. $10,266,704.

"Q. And do you find that he has omitted various items of apparatus?

43203

"A. I do.

"Q. What do those which you have observed that he has omitted amount to in the total?

"A. $124,544.

"Q. And $124,544 is your valuation of the omitted items, is it?

"A. Yes.

"Q. That would make a total original cost new, including these omitted items, of how much?

43,804

"A. $10,388,248.

"Q. And if you include his engineering charge at 3 per cent and your interest at 4 per cent, what would the total be?

"A. $11,115,425.36.

"Q. Now, if you were to add the engineering charge of 10 per cent, which you say is the minimum figure, and the interest charge of 5 per cent on the basis of two years' period required, what would the total cost be, now?

"A. $11,998,425.

"Q. Now, the sheet which you have here shows the
43,805 detail by stations of such testimony, does it?

"A. It does.

"Mr. Mathewson: I offer that in evidence.

"Received in evidence and marked Complainant's Exhibit No. 372, January 30, 1907."

Mr. Ransom: I now offer in evidence from the record in the prior suit, printed page 6,509 of the Supreme Court record, the exhibit.

Mr. Chambers: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

Table received in evidence, and marked Complainant's Exhibit No. 494, and is as follows:

43,806

	Edgerton's Estimate Depr.	Edgerton's Values, New
14th Street Plant	$1,405,986.00	$1,558,736.00
42nd Street Plant	1,008,801.25	1,169,297.00
44th Street Plant	1,110,878.00	1,201,968.00
21st Street Plant	2,176,492.00	2,408,233.00
99th Street Plant	544,708.00	590,366.00
18th Street Plant	234,986.00	284,200.00

43297

63rd Street Plant	623,740.00	633,228.00
65th Street Plant	892,171.00	927,373.00
111th Street Plant	900,406.00	1,003,623.00
132nd Street Plant	457,524.00	475,779.00
Inwood	11,772.00	13,901.00
	$9,367,344.25	$10,266,704.00
Add to above values for engineering superintendence and inspection, 3 per cent	281,020.00	308,001.12
Add for interest on money necessary to be used for construction, 4 per cent	374,693.00	410,668.16
	$10,023,057.25	$10,985,373.28

43298

To Edgerton's Cost New, as above computed

Add as per Mayer's Schedule, General Engineering, 10 per cent

Add as per Mayer's Schedule, Interest, 5 per cent

43299

Omissions	Edgerton's New Value Including Omissions from Mayer's Sched.
$13,279.00	$1,572,015.00
11,216.00	1,180,513.00
14,550.00	1,216,518.00
1,610.00	2,409,843.00
89,493.00	640,859.00
10,396.00	294,596.00
...	633,228.00
...	927,373.00

43300

	20,000.00	1,023,623.00
	...	475,779.00
	...	13,901.00
	$121,544.00	$10,388,248.00
	3,646.32	311,647.44
	4,861.76	415,529.92
	$130,052.08	$11,115,425.36
		10,388,248.00
		1,038,824.00
		$11,427,072.00
43301		571,353.00
		$11,998,425.00

Mr. Ransom: I read from the same testmony, Mr. Mayer, Circuit Court record, page 6,574, the Supreme Court record 4,591:

"Q. Now, taking Mr. Edgerton's detailed prices; he computes the 132nd Street building at $21,160, but his schedule it appears would call for a value of
43302 $30,000?

"A. It does.

"Q. Now, you have a detailed estimate of the 132nd Street building comparing your values with Mr. Edgerton's pointing out wherein he has omitted items or is in error.

"A. I have.

"Q. Is this it (handing witness paper)?

"A. Yes, sir.

"Q. And does the comparison of the figures or the items as given under the head, 'Mayer's Valuation' as compared with the column, 'Edgerton's Valuation' in-

dicate the extent of the figure in which you think he is in error in each case?

"A. It does.

"Mr. Mathewson: I offer this paper in evidence.

"Received in evidence and marked Complainant's Exhibit 373, January 30, 1907."

Mr. Ransom: I now offer that in evidence as an exhibit in this case.

The Master: The same objections, I take it, are made, the same rulings and exceptions.

The statement is as follows:

DETAILED ESTIMATE OF GOVERNOR & BOILER HOUSE AT 132nd STREET HOLDER PLANT.

Dimensions of Building Inside 100 ft. 0 in. x 46 ft. 0 in. x 29 ft. 0 in.
Total Cubical Contents 133,800 cu. ft.

MAIN BUILDING NOT INCLUDING FOUNDATION	Mayer's Valuation.	Edgerton's Valuation.
Painting and Glass	$150.00	$325.00
Hardware	200.00	
Carpenter	735.00	
Plumbing and Gas Fitting	795.00	
Ashlar Stone & Setting 110 cubic feet at $3.50 per cubic foot	385.00	130.00
Plaster, 390 square yards at 60 cents per sq. yd.	234.00	
TERRA COTTA COPING:		
Material	430.50	
Labor of setting terra cotta	184.50	
Asphalt for damp roofing at 4 cents per sq. ft.	53.00	

Granolithic cement floor	223.00		520.00
Vitrified brick floor at $31.00 per 1,000	335.00		40.00
Cement wash for walls	25.00		
Bull-nose brick, at $70.00 per 1,000 laid	50.00		
Enamel brick, 2,595 at $110.00 per 1,000 laid	325.00		100.00
Hard brick, 209,000 at $25.00 per 1,000 laid	5,225.00		4,760.00
Total	$7,350.00		$5,875.00
Profit 10%	935.00		
Total Cost of building less foundations	$10,285.00		
	Mayer's Valuations.		Edgerton's Valuations.
FOUNDATIONS:			
Excavation, 1,352 cu. yds. at $1.25 per cu. yd.	$1,690.00		$1,370.00
340.8 cubic yards of concrete at $7.00 per cu. yd.	2,428.00		480.00
Cutting holes and cleaning	266.00		
Bricks (67,000) at $25.00 per 1,000	1,675.00		
Total cost	$6,059.00		$1,850.00
Profit 10%	606.00		
Total cost of foundations	$6,665.00		
IRON WORK:	Mayer's		Edgerton's
Roof frame, gutters, etc., 32,546 lbs. at 5 1/2 cents per lb.	$2,301.02		$6,400.00
Monitor sash as per detailed estimate	630.00		470.00
Steel floor, 36,203 lbs. at 5.8 cents per lb.	2,104.00	Included in above	6,400.00
Platform and stairs, 12,334 lbs. at 6 cents per lb.	740.04		165.00

Terra cotta roof covering as per detailed estimate	1,170.00		500.00
Slating and flashing as per detailed estimate	2,250.00		590.00
Total for iron work, which includes 10% for operating expenses and 15% for profit	$9,786.05		$8,165.00

MISCELLANEOUS ITEMS:	Mayer's Valuation.		Edgerton's Valuation.
Fire proof concrete arches	Contained in	Concrete	$2,500.00
Tiling coping	" "	Enamel brick	10.00
Fire proof doors	" "	Iron work	40.00
Flashing and gutters	" "	Roof Frame	200.00
Machinery foundations	" "	Foundations	700.00
Total			$3,450.00

RECAPITULATION:	Mayer's Valuation.	Edgerton's Valuation.
Building	$10,285.00	$5,875.00
Foundations	6,665.00	1,850.00
Iron work	9,786.00	8,125.00
Miscellaneous items	"	3,450.00
Total	$26,736.00	$19,300.00
Profit	Included in above	1,860.00
Total cost	$26,736.00	$21,160.00
Cost given in Schedule	26,736.00	30,000.00
Total contents of building 133,800 cu. ft.	20,071.00	19,310.00
Cost per cu. ft. contents not including foundation	.15	14.44

43312

Mr. Ransom: I continue to read:

"Q. Now, you have prepared a detailed estimate, have you not, to check your figures on the No. 2 shed at 21st Street?

"A. Yes, sir.

"Q. And that would give a total of the detailed estimate of how much for the shed?

"A. $67,846.

"Q. Well, that is the amount of your original schedule, isn't it?

"A. That is the amount for the original shed, the total estimate, first value, $65,888.13—

43313 "Q. That is a trifle less than your original estimate?

"A. Yes.

"Q. But did this average that you employed of 16 cents per cubic foot, for the sheds at 21st Street, would that apply also to the Shed No. 6, as well as the purifier house and condenser there?

"A. It applies to all sheds from 1 to 6, and some of them are at present used as purifiers and condenser houses.

"Q. How do the purifier house and condenser house, as well as Shed No. 6, compare in expense of construction with Shed No. 2?"

43314 Mr. O'Brien: This does not seem to be rebuttal.

The Master: I think perhaps it is, it is meeting Mr. Edgerton's evidence.

"A. Well, the average of all of them is 16 cents a cubic foot, for the reason that the purifier house and condenser house have double floors and more foundations with apparatus which is omitted in the case of the sheds.

"Q. So that the average of 16 cents you would consider fair?

43315

"A. It is fair for all of them.

"Q. Now, in figuring out the valuation of the coal shed at this station by a detailed estimate according to your figures you find results how?

"A. I find a value of $69,830.

"Q. And what have you got there in your schedule, as the value, according to cubic contents?

"A. $63,168.

"Q. And to what is the increase in value by the detailed estimate due in general?

"A. At the time the original valuation was made the inclined bottom supported upon timbers for the carrying of coal was not calculated in detail. Such 43316
has been done now and that increases the original value given.

"Q. Now, you have testified as to the foundations which you have employed in your apparatus and buildings. How do you find what character of foundation was used, or determine what character of foundation to figure upon in these estimates?

"A. Wherever the character of the ground appeared doubtful or the character of the foundation, in each instance, I referred to drawings where I could find such, and where I could not find drawings I got the information from the people who had been at the works for a long time.

43317

"Q. And isn't it a fact that some of these buildings are on soil that is way below the depth of the street, that is on low ground?

"A. All of the buildings are on such soil.

"Q. Now, from your experience in addition to the information that you got from books and other sources, what would you say as to the character of the foundations which must be required under buildings on such soil?"

43318 Mr. O'Brien: I object to that as incompetent and irrelevant and immaterial, what he got from books.

The Master: Objection overruled.

Mr. O'Brien: Exception.

"A. They could not be constructed without pile foundation.

"Q. Now, do you find on Mr. Edgerton's valuations for these buildings to which I have called your attention, that he has made any allowance for pile foundation or any foundation except the ordinary foundations that could be used in the hard soil?"

43319 Mr. O'Brien: I object on the further ground that the witness Mayer did not qualify as an expert on building construction.

The Master: Objection overruled.

Mr. O'Brien: Exception.

"A. He had not, and in some instances he did not allow enough for ordinary foundations."

Mr. O'Brien: I call your attention in regard to this pile business there that Rowland's appraisal would indicate that there were no piles there, but rock and clay.

The Master: Objection overruled.

Mr. O'Brien: Exception.

43320 "Q. Now, Mr. Edgerton suggested that there were no foundations under the water gas apparatus which he was able to ascertain, have you a sketch here showing the foundations under these apparatus as they really exist?

"A. I have, and this sketch was prepared from drawings which I saw at the works, which I was told were used for the construction of these foundations.

"Q. Did those drawings appear to be correct so far as you could check them by your own observation?

"A. They did.

43321

"Q. And how did you find this foundation was constructed, of what material was this foundation in the old generator house?

"A. In some of the drawings I saw at the works show a depth of foundation of from eight to ten feet below the surface line, supported on piles and stone flagging.

"Q. What did you find that the foundation under the water gas apparatus consisted of?

"A. The foundation under the water gas apparatus consisted of solid concrete five feet in depth, under the superheater and carbureter, and five feet six inches of depth under the generator.

43322

"Q. Did you find that Mr. Edgerton in his estimate made any allowance for these expensive foundations?

"A. No, sir.

"Q. What did you find the detail estimates for the foundation under the buildings as well as the apparatus give, combined with the old and new generator houses?

"A. The total of all foundations for buildings and apparatuses is $88,595.

"Q. Now, at what figure did you carry these foundations in the new and old generator houses and the schedule of valuations which you presented, and which are criticised by defendants' witnesses?

43323

"A. The valuations of the foundations for the two buildings amounted to $32,197 in the instance of the new generator, and $31,065 in the instance of the old generator house.

"Q. Making a total valuation of, for the two houses?

"A. Of $63,262.

"Q. Well, now, it appears that the difference between that and the detailed estimate you have specified is $25,333. How is that difference taken care of?

"A. In the application of the unit values per cubic

43324 foot of building done. I have allowed for ordinary foundations constructed in soil that requires no reinforcement. In other words, in all my unit valuations on building, by the cubic foot foundations, of about four feet depth in ordinary soil below the surface line are included. Therefore, this only represents the difference—

"Q. Now, have you endeavored to establish the value of foundations given by Mr. Edgerton from his testimony in relation to these buildings?

"A. I tried to but it was impossible as the foundations were not given in detail separately from the
43325 rest of the building.

"Q. Have you examined the values which he gave for the excavation of these buildings.

"A. The excavation of these buildings? The excavation is chargeable to the foundations only. I have examined such items in Mr. Edgerton's testimony.

"Q. What did you find in that regard?

"A. In the instance of the old and new generator house I find that he has a total item for excavation amounting to 629 cubic yards.

"Q. Figured at how much per yard?

"A. At $1 per yard, a total of $621.

43326 "Q. Now, what is the cost of excavation, I mean the depth of excavation of the character required for such foundation in the City of New York, including the carting and dumping?

"A. The actual amount of excavation in the two above referred to buildings is 6,740 cubic yards, or over ten times as much as that allowed by Mr. Edgerton in his testimony.

"Q. And at what price do you figure deep excavation, including carting and dumping in the City of New York?

43327

"A. Excavation in ground of this character, where there is a large quantity of water to be encountered, is exceedingly slow and is worth $2 a cubic yard.

"Q. Therefore, the total cost of excavation for these two buildings, would equal how much as compared with Mr. Edgerton's estimate of $621?

"A. $13,480.

"Q. In that estimate has any allowance been made for sheet piling and pumping?

"A. None whatever, but it should have been made, such item is absolutely indispensable in excavating in ground of that character.

43328

"Q. Is sheet piling and pumping included in that amount of $13,480?

"A. No, sir, that is an extra item. That $13,480 is for the excavation alone.

"Q. Now, what would be the total value of the sheet piling and pumping in addition to the $13,480?

"A. The sheet piling for these two buildings cost $3,360, whereas the item of pumping cost $5,750. That last item, of course, includes boiler, fuel, the water, the salaries of the engineers, and coal, etc.

"Q. Well, then, the expenditures, if I aggregate these correctly for these foundations should be $22,620 as against Mr. Edgerton's allowance of $620?

43329

"A. Yes.

"Q. So there is a difference of $22,000, about?

"A. Yes.

"Q. Now, have any allowances been made by Mr. Edgerton for the solid concrete and brick foundations which are under the water gas apparatus as shown in the sketch of the foundations which you have prepared?

"A. There has not been.

"Q. From what were these sketches drawn; what

14443

43330 kind of drawings are these sketches which you have prepared?

"A. From the drawings in existence at the works which I understand were used in building these foundations, that is, the old generator house showed pile and solid brick foundations, which formed the foundation of the original benches, the retort benches. The concrete foundation I think under the water gas apparatus was not piled.

"Q. Now, generally speaking, without going into great detail, have you compared Mr. Edgerton's estimates upon various factors of cost with the actual
43331 cost of construction as known to you in New York for these particular factors?

"The Witness: I have.

"Q. Now, suppose you take one building and make some comparisons, what building would you select?

"A. For instance, the building which we have only completed a short while ago at the new plant of the Astoria Works, the inclined retort house.

"Q. How did you find that the unit of cost which you have employed in computing the value of buildings compares with the actual unit of cost of that building?

"A. The cost of that building?"

43332 "Q. Is your unit of cost more or less than the actual unit of cost in that case?

"A. It requires a little explanation.

"Q. Well?

"A. In this instance the building is higher and therefore the relative cost of the foundation floor area as well as the roof construction would be the same, also the volume is increased on account of greater heights, therefore, the unit of value of such building should be considerably less.

43333

"Q. On your schedule?

"A. Yes, the unit of value computed as it is, is very little less.

"Q. Now, take the 111th Street exhauster house, to which he referred, Mr. Edgerton in his estimate has put brick at $14 per thousand laid. What is the actual cost?

"A. $25 a thousand.

"Q. He has stated stone footings, estimated at 90 cents per cubic foot. What is the actual cost per cubic foot?

"A. The actual cost is $1.40 per cubic foot.

43334

"Q. He has estimated flooring at $40 per thousand feet board measure. What have you to say as to that?

"A. The cost of the material alone is $42 without any labor attached.

"Q. And what would be the total cost per thousand feet including labor?

"A. If it was double flooring the cost would be $82 per thousand feet laid.

"Q. What is the cost of labor per thousand feet for single flooring and double flooring?

"A. About $20 per thousand feet board measure.

"Q. Single or double?

43335

"A. Single.

"Q. And $40 for double?

"A. Yes.

"Q. He has estimated yellow pine girders at $40 per thousand feet board measure. What do you say as to that?

"A. The actual cost of the material would hardly be covered by that estimate without any labor. I have quotations for the same kind of lumber at present at $45 per thousand feet.

43336

"Q. Now, he has inserted steel checkered floor plate at five cents a pound, does that cover the cost of such floor plates?

"A. The material cost alone at present is 3 1-2 cents per pound, and the cost of labor to lay the plates, including the fitting and cutting is 1 3-4 cents per pound, making a total actual cost without any profit to the contractor of 5 1-4 cents per pound.

"Q. That includes all waste that may arise in cutting?

"A. Any waste in fitting and cutting.

"Q. Did you find that Mr. Edgerton has allowed
43337 anything for excavation for this building?

"A. No, I believe that Mr. Edgerton omitted the entire item of excavation for this building.

"Q. Now, in the same estimates that Mr. Edgerton has allowed cost of 50 cents per cubic yard in the instance of the 132nd Street governor and boiler house and in another instance he has applied the figure of 81 per cubic yard. What is the average cost for deep excavation of this character, as required in such buildings?

"A. Not less than $1.25, including the cost of disposing of the earth, the dumping privileges, etc.

"Q. Do you find in any of Mr. Edgerton's estimates
43338 that he has made an allowance for the contractor's expenses, for his office force, draftsmen, scaffolding, shop wear and tear on tools and appliances, etc.?

"A. He has not.

"Q. What percentage of the value of the cost of work of this kind in your experience in this character of building should be allowed for these items?

"A. It would come not less than 10 per cent on the actual cost of the work.

"Q. Now, Dr. Marks, in substantially all cases has assumed your cost of apparatuses and boilers to be

43339

correct, but in some few instances he differs with you, and with Mr. Edgerton he differs in many instances. Now, taking up Mr. Edgerton's statement as to holders, do you find that he has submitted any detailed estimates as to the cost of holders including guide frames?

"A. He has not.

"Q. At page 5347 he states that one-third of the cost of the holder is an ample allowance for the cost of the guide frame. What have you to say as to that proposition, Mr. Mayer?

"A. I can only say that such estimate is absolutely erroneous. Some 25 or 30 years ago it was the in- 43340
tention to have the various gas holders uniform in their construction, and at that time they endeavored to use a column in the guide frame for every 10 feet in diameter of the holder, but such were only endeavors and could never be carried out with any kind of certainty. For instance, a holder 60 feet in diameter would have six columns, one 70 feet would have seven columns, one 80 feet eight columns, etc. Now, there were no holders built at that time with an uneven number of columns in the guide frame. Why that was so I cannot explain, but, nevertheless, it was the fact, and in the very instance of the Consolidated works a glaring example of this kind exists which 43341
will prove positively that Mr. Edgerton's assumption that the guide frame of the holder amounts to one-third the cost of the holder is impossible. For instance, the four holders at the 21st Street station of 400,000 feet capacity are constructed in three lifts with an outer section of 88 feet in diameter. These holders have 16 cast iron columns in the guide frame. At the same station there are six holders each of 345,500 cubic feet capacity constructed in two lifts,

43342 the outer section of these holders is 95 feet in diameter. These holders have guide frames consisting of only 8 cast iron columns.

"Q. The diameter is greater, but the number of columns is only half as many?

"A. The diameter is greater, but the number of columns is only half as many. The two holders of 250,000 cubic feet capacity at the same station are constructed in two lifts with 84 feet in diameter, and the guide frame only contains 6 columns, so that it will be seen that the maximum variation in the diameters of the different holders as between 84 and 95
43343 is only 11 feet, whereas the variation in the number of columns amounts to over 100 per cent, and such difference excludes all possibility of applying a general rule which assumes that the cost of the guide frame to the holder is one-third of the cost of the holder itself.

"Q. Now, if the valuation of the various holders (including guide frames by Mr. Edgerton) is based on the assumption of such proportionate values between the guide frames and the holders, would that be sufficient to account for the entire difference between Mr. Edgerton's and your own valuation as to the value of the holders.

43344 "A. No, I think it would account for a great deal more than that.

"Q. And is the same true of the other cases in which differences of value exist where such a general rule has been applied by Mr. Edgerton?

"A. It is so.

"Q. Now, what were your values on holders and apparatuses, with which Mr. Edgerton disagrees, based on?

"A. My valuations for holders and apparatuses are all based on actual detailed estimates. Of course it

43345

was impossible for me to make any such detailed estimates in the time at my disposal during my examination of the plants, but as I had access to all the detailed estimates of the firm of Bartlett, Hayward & Co., with which I was formerly connected, and which estimates are an accumulation of over 25 years, made partly by myself or under my personal direction, I was thoroughly familiar with applying them to the apparatuses in question at the works of the Consolidated Gas Company.

"Q. Now, in giving your estimates of the value of holders, for instance, did you ever make or did you have before you detailed estimates in each case showing the actual cost of such holders or of the holders of the same character which you could change as might be required for existing conditions of the material or labor?

43346

"A. Yes, I had the actual detailed estimates of weight, to which I applied the prices under New York conditions as they existed last summer.

"Q. Now, do you mean merely estimated weight or actual shipping weights?

"A. I had both.

"Q. Where Bartlett-Hayward Co., for instance, installed any part of the holders or installed a holder of the same kind, did they keep a record of the actual weight of the holder?

43347

"A. Absolutely a record of the actual cost.

"Q. Were holders ever erected by you or under your personal supervision?

"A. They were all constructed under my personal supervision.

"Q. And did you have access to all this in making up your estimates?

"A. I did.

43348 "Q. What proportion of the detailed apparatus would you say, Mr. Mayer, in your valuation consists of apparatus upon which you computed the weights, and respecting which you had exact weights or procured exact weights one way or another as distinguished from the stock items like boilers and things of that sort which are built by special builders and not particularly by Bartlett, Hayward & Company?

"A. Well, all apparatus at the plant as compared with the other items for which I was compelled to obtain prices from the manufacturer which manufactured such articles, would cover probably not less
43349 than 96 to 97 per cent of the cost of the apparatus or plant."

Mr. O'Brien: Just a minute, Judge, you passed over the statements made by counsel, and I think whether it goes in this record or not, the Master ought to have knowledge of just the colloquy that took place.

The Master: No, I don't care anything about it.

Mr. O'Brien: Well, the objection was made there—

The Master: If Mr. Ransom has omitted anything that you think is relevant to this testimony,
43350 you can call my attention to it on Monday.

Mr. O'Brien: Well, don't you wish to hear the objection made and the ruling of the Court?

The Master: No, I am not interested in that when the answer has been allowed.

Mr. Ransom (reading):

"Q. And where Mr. Edgerton differs from your weights are your weights of apparatus estimated or assumed, or are they the actual result of your knowledge and your experience?

43351

"A. The actual result of knowledge based upon my own experience.

"Q. As to the three or four per cent consisting of boilers, etc., have you bought and installed boilers from time to time?

"A. Many of them.

"Q. In your estimates which have been attacked by Mr. Edgerton in regard to these items, did you in addition to your own knowledge make any inquiry at the time of the manufacurers as to the prices at which the boilers could be installed?

"A. I so stated that in my testimony.

43352

"Q. As an illustration, Mr. Mayer, have you here a sheet showing the detail in which it is necessary to go, and into which Mr. Edgerton did not go, to make an exact estimate of the cost of a gas holder?

"A. I have.

"Q. This estimate is a hypothetical holder of the type of the 132nd Street holder, 5,000,000 cubic feet—

"A. It is of the same dimensions, but slightly less in pressure, I think.

"Q. Now, does this detail which I hold in my hand show the detail into which it is necessary to go to give an exact estimate of the holder?

"A. Yes.

43353

"Q. In making an estimate of the value of these different apparatuses, how do you proceed as compared to the way in which you would proceed to make a bid for furnishing such apparatuses?

"A. Identically in the same manner."

Then a question by the Master—

Mr. O'Brien (interrupting): No, then a statement by Mr. Mathewson.

The Master: I don't want Mr. Mathewson's statement.

43354

Mr. O'Brien: He says, "I offer this paper."

Mr. Ransom: Well, I am entirely willing to read it if counsel asks for it (reading):

"Mr. Mathewson: I offer this paper in evidence as an illustration of the details into which the witness says it is necessary to go to get the actual value of a holder. This is not an estimate of the 132nd Street holder, but illustrative of what it is necessary to do to get the exact value of the holder, but Mr. Edgerton stated on the stand that he did not do that.

"Mr. Kirby: What Mr. Edgerton stated on

43355 the stand is in the testimony.

"Mr. Burr: Isn't this merely a bill of material?

"Mr. Mathewson: This is an estimate in detail of the weights to which in figures the price for material and cost of labor have to be applied to suit conditions at the time each piece of work is installed, the actual price.

"Mr. Burr: This simply shows the material used in the holder.

"A. Yes. Shows the weights of material and each class of material.

"By the Master:

43356 "Q. Is there anything in this paper which differentiates the cost of the guide frame from the cost of the holder?

"A. Yes.

"Q. Can you pick it out?

"A. Yes, sir. (witness exhibits same to Master.)

"By Mr. Mathewson:"

Do you want me to read Mr. Burr's question?

The Master: I just want you to read questions and answers.

43357

Mr. O'Brien: This is a question and answer now.

The Master: Read whatever you want then, in the form of question and answer.

"Q. I ask you at this point whether it is possible to make an exact estimate of the cost of a holder or other piece of apparatus constituting these other 96 per cent to which you have referred without going into a detailed estimate of the same general character as you have presented here, and which you have shown to the Master?

"A. I consider it absolutely impossible. All the factors have to be based on the weight, and such factors cannot be determined unless the weight is known. 43358

"By Mr. Burr:

"Q. Where did you get the weights which appear in this hypothetical holder?

"A. From the former estimates for a holder of those exact dimensions.

"Q. That was not open to Mr. Edgerton for his inspection, was it?

"A. Oh, no.

"Mr. Mathewson: It would have been if you had cross-examined him on the subject and brought it out."

The Master: I don't want that stuff. 43359

Mr. Ransom (continuing reading):

"Q. Have you that estimate now?

"A. Here it is.

"By Mr. Mathewson:"

Then there was a colloquy, then the exhibit was marked for identification, then it proceeds:

"By Mr. Mathewson:

"Q. Have you examined Mr. Mayer's testimony as to the manner in which he found the valuation?

43360

"A. Yes.

"Q. My question, Mr. Mayer, is, whether in reference to other items of apparatus, excluding the stock items like boilers, etc., you consider it necessary to get an exact estimate, to go into a like detailed computation.

"A. It is even more so with the other apparatus than in the instance of holders.

"Q. Mr. Edgerton spoke of double-riveted covers for purifiers as something unique or different. What is the fact?

"A. Well, all large purifier covers must necessarily
43361 be double riveted on account of the interior strain."

Mr. O'Brien: Judge, I think you better have that marked for identification, "Complainant's Exhibit No. 374, January 30, 1907, E. C., Jr., Steno."

The Master: You can offer that when Judge Ransom gets through with his offer.

Mr. Ransom (reading):

"Q. Have you made a computation as to the number of hours that you and your assistant put in in examining these plants for the purpose of your testimony and estimate originally?

"A. I have.

43362 "Q. How many?

"A. My own time and that which my assistants actually spent at the various works was 3,780 hours.

"Q. And were your assistants men familiar or unfamiliar with gas apparatuses?

"A. They were all draftsmen and engineers, picked for that particular purpose, they had been working with me for years and they were familiar with all the details of construction. Without such men I could not have accomplished it even in that time.

"Q. Could you have accomplished in that time with these men that result, if you had not had the benefit of the estimates and drawings which had been placed at your disposal?

"A. It would have been impossible even in that time. It could not have been done within 12 months with more men if I had not had these estimates and drawings at my disposal.

"Q. Did you compute from the testimony the number of hours occupied by Mr. Edgerton and Dr. Marks?

"A. I have. 43364

"Q. Well, how many hours, about?

"A. Dr. Marks has been 84 hours at the works and Mr. Edgerton 50 hours."

That is all.

The Master: All right. Mr. O'Brien can read in any portion of this testimony that he thinks is material or that bears upon this rebuttal on Monday. Call your next witness.

GEORGE E. WOODS, recalled.

DIRECT-EXAMINATION BY MR. RANSOM: 43365

Q. Mr. Woods, since you testified in this case previously as to the rates of the wages paid by the Consolidated Gas Company at its manufacturing and holder stations, and in its mains and services department and in its shop department, have these rates of pay increased or decreased?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper rebuttal.

The Master: Objection sustained on the ground that it is not proper rebuttal.

Q. Is the complainant company now paying less for labor, that is, paying a lower rate per day for any of the classes of labor in any of these departments than was embodied in the schedules and testimony which was presented when you previously testified?

Mr. Chambers: Same objection.

The Master: Same ruling.

Q. Have you prepared a schedule showing present rate of pay, maximum rate and minimum rate and
43367 average rate for each of the classes of labor in the manufacturing stations, holder stations, mains and services department and shop department?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Ransom: Well, can't he answer whether he has or not?

The Master: Yes, he can say whether he has?

A. I have.

Q. And is this such statement (handing paper)?

A. Yes, that is the statement.

Q. This was prepared by you and known by you to be correct?

43368 A. It was, and it is.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial, not proper rebuttal.

The Master: Objection sustained on the ground that it is not proper rebuttal.

Mr. Ransom: Exception. I call your Honor's attention to the fact that in two of the exhibits of the witness Little offered in evidence in behalf of the defendants and concerning which the witness Little was interrogated both on direct-

43369

examination by the defendants and in some detail by me upon cross he testified as to rates of pay which he assumed for the purposes of his computations, and which he said were rates of pay being paid, or he said in some instances a little more than were being paid by the complainant company. I offer this now in rebuttal of the testimony of the witness Little for the purpose of showing that his exhibits are based on entirely unsound assumptions of fact, or statements on his part, which your Honor received over my objection as to the rates of pay, which have to be taken into account in determining the profitableness or unprofitableness of the method of operation which the witness Little testified to in behalf of the defendants.

43370

The Master: My ruling will stand.

Mr. Ransom: Exception. I am at a loss to know how we can rebut statements of fact.

The Master: They are not statements of fact, they are statements of opinion.

Mr. Ransom: Well, he stated as a fact—

The Master: On cross-examination.

Mr. Ransom: I do not believe he did.

The Master: Oh, yes.

43371

Mr. Ransom: Well, let us see his exhibit. I call your Honor's attention to the fact that all through—

The Master: Well, read me one part of it.

Mr. Ransom: Well, the one to which I turned, men on charging floor.

The Master: Yes, that is his estimate.

Mr. Ransom: "On two machines, three shifts a day, a total of six mechanics would be required. This number would be required," etc.

The Master: That is his estimate?

Mr. Ransom: "The mechanics would get $5 a day, and the helpers $4 a day, making the average man day cost $4.50"?

The Master: That is all his opinion.

Mr. Ransom: "There would be also six men for twenty-four hours for operating the pushers. This meaning another 2,190 man days at $5."

The Master: I know his exhibit is full of estimated costs of labor, which I will consider in the light of actual conditions as they appear in the record.

43373 Mr. Ransom: Well, I don't know what you can do, or how you can do that with respect to actual conditions.

The Master: Well, I do. The testimony in the record is what was actually being paid up to the last of August or September, whenever Mr. Woods testified, with the additional evidence that the trend was up, and there isn't any evidence to the contrary, and I shall assume that the trend is up until there is evidence to the contrary, despite Mr. Little's opinion that he can do it for less.

Mr. Chambers: I do not want to acquiesce in the Master's statement.

43374 The Master: Nobody asked you to, Mr. Chambers. I am answering Mr. Ransom's fear that I may be misled by opinion evidence against actual conditions in the record.

Mr. O'Brien: I dissent from the interpretation of the record. I dissent without opinion.

Q. Mr. Woods, have you ever had occasion to test the temperature of gas in holders in relation to the temperature of the outside air?

Mr. Chambers: I object to that.

Mr. O'Brien: Your Honor, that brings me back

43375

to the memory of Miller again, feeling the pulse of holders. It is not rebuttal.

The Master: That is what is bothering me.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial, not proper rebuttal, there is no evidence here about test of gas in holders, and in fact it has been shown that there hasn't anybody tested gas in the holders.

Mr. Ransom: Well, he has.

The Master: Tell me where it has a bearing.

Mr. Ransom: Because it has a bearing on the question of the effect of these thirty-four miles of mains that this company has been compelled 43376
by the City and the Public Service Commission to keep up in the air, to use a now historic phrase, for a considerable number of years.

Mr. Chambers: Thirty-four miles in the air?

Mr. O'Brien: The same air that surrounds the holders.

Mr. Ransom: I want to bring it out on the claim made by the defendants in this case that this reduction in candle power which has resulted from the gas having to pass through mains, by-passed over streets, these large mains, is due to some condition at the holder, and I am offering the holder tests— 43377

Mr. Clark: That should be done on cross-examination.

Mr. Ransom: What I am offering to show is that the method of operating holders and the effect of outside temperature upon gas in the holders is such as to negative—

The Master: I will take it.

Mr. Chambers: Your Honor, it is the rebuttal of their own testimony.

The Master: Overruled. Did you ever take tests of the temperature of the gas in holders?

A. I have.

Q. Many times?

A. I have.

Q. Many different holders?

Mr. Clark: It goes in over our objection?

The Master: Yes.

Mr. Clark: Exception.

Mr. Chambers: Exception.

A. I can only recall two different locations.

Q. What are those locations?

A. 44th Street and Astoria.

43379 Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. O'Brien: Maybe he did it lately, but—

The Master: Well, let us see. At what time did you make these tests?

The Witness: Oh, several years ago.

Q. What in your experience is the relation between the outside temperature of the air and the temperature of gas in the holder?

Mr. O'Brien: That is meaningless.

Mr. Chambers: Objected to as incompetent, irrelevant and immaterial, and it is rebuttal on their own testimony.

43380 The Master: Yes.

Mr. O'Brien: The question is not definite. What is the relation of the outside air to the inside gas.

The Master: We will find out.

The Witness: There is a relation to outside temperature and the temperature of the gas in the holder. You would not expect the temperature in the holder to be the same in August as it would be in December. There is an effect upon it, but not to the extent as of the outside temperature.

because if that should exist, that the gas in the holder became the same temperature as the atmosphere, we would wreck all of our holders, we would have water in them, and if you got down to below freezing with the formation of ice upon the surface of the water, all our holders would be wrecked, so that at no time could it be possible for us to have gas in the holder below 32 degrees without a very grave possibility of wrecking the holder.

Q. As a matter of fact, are the holders heated during the cold weather, the cups? 43382

A. Both the tank water and the cup water is heated.

Mr. Chambers: Same objection and exception.

Q. By what method is it heated?

A. By steam.

Q. Steam pipes around the holder?

A. Steam pipes and steam jets going in.

Q. What is the depth of the water which is thus heated on the different types of holders?

A. Well, the depth of the water in the tank runs anywhere—

Mr. Chambers: Same objection.

The Master: Same ruling.

The Witness: From 40 to 50 feet. 43383

Q. And is there any particular temperature which is maintained for that water?

A. We undertake to keep the water—

Mr. Chambers: I object to it as indefinite.

The Master: Overruled.

Mr. Chambers: Exception.

A. (Continuing.) Between 50 and 60 degrees.

Q. What is the lowest temperature that you have ever found on tests for gas in the middle of a holder?

43384 George E. Woods, Direct.

Mr. Chambers: Same objection.

Mr. O'Brien: Objected to, it assumes that he made tests of gas in the middle of the holder, which he has not testified to as yet.

The Master: Objection overruled.

A. No, I have never tested the gas inside the holder, that is, I have never tested the gas in the middle of the holder, but I have tested the gas coming out of the holder in the main leading directly from the holder. I have not only taken temperature at that point, but many times we have taken two
43385 points at points away from that for the purpose of determining to what extent the gas is being cooled after leaving the holder.

Q. What is the lowest temperature you have found for gas at the point of leaving the holder?

Mr. O'Brien: I think that the question assumes that he made many tests, and he said he only made two.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: What is the lowest you ever found of gas leaving the holder?

The Witness: I cannot recall any test under
43386 52.

Q. You have made them in winter?

A. We have, extremely cold weather.

The Master: I will have to adjourn until Monday at 9:30. Have you any other witnesses?

Mr. Ransom: Aside from Mr. Carter, a few questions, I think not.

The Master: Well, will there be any more tables offered from Mr. Carter Monday morning, that will require checking up by the other side?

43387

Mr. Ransom: I think not.

Mr. Chambers: I would like to have permission to have some of our men go to the 99th Street and 14th Street stations and see the manufacturing books.

The Master: We will have them down here Monday morning.

Mr. Chambers: I want the men to work on them between now and then out of court.

The Master: We will have them at the Gas Company's office tomorrow morning.

Mr. Chambers: That is 1915, 1916, '17, '18 and '19?

43388

Mr. Ransom: I understand a request was made by Mr. Mylott this afternoon for those books.

Mr. Chambers: Yes.

Mr. Ransom: I had the 99th Street books up here, because I expected to offer testimony in relation to them. Mr. Mylott will have the use of the books tomorrow.

The Master: Monday morning at 9:30, at which time I expect the rebuttal to be finished and the cross-examination is to proceed.

Mr. Chambers: I would like to note on the record that I would like an adjournment on Monday.

43389

The Master: You have it noted already.

Mr. O'Brien: Your Honor, my request has not been noted for an adjournment on Monday by reason of an appointment in the Supreme Court before Mr. Justice Greenbaum.

The Master: That is declined.

Mr. O'Brien: Exception.

Adjourned until Monday, March 1, 1920, at 9:30 A. M.

Last Complainant's Exhibit No. 495.
Last Defendants' Exhibit AA-521.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 43393

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, March 1, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 43394
MR. O'BRIEN, of Counsel for defendant Swann.

GEORGE E. WOODS, resumed:

Mr. Chambers: I suppose Mr. O'Brien is down in Court on that motion in the Kings County case.

The Master: I don't care where he is. I don't know what he is doing this morning any more than any other morning. 43395

Mr. Chambers: He asked to be excused.

The Master: He is rarely ever here on time. He may show up.

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

Q. Mr. Woods, it has been contended and suggested on behalf of the defendants in this case that at the manufacturing stations the mains containing gas are exposed to the outside temperature of the air at or about the time the gas leaves the storage holders. Is that correct?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. It is not.

Q. Is there any place in the works where these mains are exposed to the air and the outside temperature of the air after the manufacture of the gas?

Mr. Chambers: I make the same objection.

The Master: Objection overruled.

43397 Mr. Chambers: Exception.

A. It is exposed to the air in the cellars of the pumping stations, which are heated buildings.

Q. But not outside of heated structures?

A. No.

Mr. Chambers: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. Mr. Woods, referring to Mr. Little's report on plant capacities and outputs, Section 3, Sheet 1, submitted on behalf of the defendants, I call your attention to the last two paragraphs, which read as follows: "This horizontal retort plant is obsolete in some
43398 of its most important details, but it can fortunately be rehabilitated along the following lines: The set should be torn out, furnaces built on one side only, one set of hydraulic mains ought to be discarded, and the retorts should be charged and discharged from one side instead of from both sides. To do this de Brouwer projectors or Fies-Aldridge, or Gibbons chain type charges should be installed." With reference to the possibility of doing the work to which Mr. Little refers, can you say how much it would cost to tear out these settings in the B plant, re-design them, and rebuild the furnaces on one side only, as Mr. Little proposes?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. If we should do the work ourselves the cost would be approximately somewhere between $225,000 and $250,000.

Q. How much per bench from the floor line down?

A. From the floor line down would be $350 to $450 and from the floor line up from $3,200 to $3,500.

Q. Per bench? 43400

A. Per bench.

Q. That is for labor and materials?

A. For labor and materials.

Q. On the basis of doing the work yourselves?

A. Yes, sir.

Q. Do you figure that would cost more or less than doing it by an outside contractor?

Mr. Chambers: I object to that as speculative and incompetent.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Based upon estimates that we have had for doing this work it would cost us about $60,000 more if 43401
we had it done on the outside.

Q. Now, from a practical operating point of view, and the economy and efficiency of plant operation, what advantage or disadvantage would be the doing of this work?

Mr. Chambers: I object to that as incompetent irrelevant, immaterial, speculative and not proper rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. There would be no advantage whatever in hav-

ing, in so long as we have conveyors on both sides and pushers, in having one furnace. The furnace would have to be either twice the size of the present furnace in order to distribute the heats, or we would have to increase the draft in order to burn the same amount of fuel under the bench. In either case the work involved in filling the furnace and cleaning the fires would not be less than it is now. In other words, we fill the furnace once in four hours, and if we maintain the same sized furnace they would be required to be filled every two hours. With the same sized fur-
43403 nace we would have an increased draft and higher temperatures in the furnace which would require a great deal more work in the cleaning of them. If we enlarged the furnace to double its present size it would require about twice the time to clean it.

The Master: What was the occasion of your getting estimates to do this work?

Mr. Chambers: I make the same objection.

The Master: Why do you object to that?

Mr. Chambers: Because I think it is speculative.

The Master: I have allowed some questions tending to show that the work is not practicable.
43404 I have myself asked a question which bears directly upon the witness's testimony a direct inquiry why, if it is not practicable, they have been figuring on it. Why do you object to that? Just because you have gotten into the habit of objecting?

Mr. Chambers: No, I object—

The Master: It is a perfectly stupid objection.

Mr. Chambers: No, you said what occasion did he have to call for estimates, etc.

The Master: If this work is not practicable,

according to his judgment, why did he get estimates, why have they thought of doing it?

Mr. Chambers: He has not said he got any estimates.

The Master: Yes, he did. Answer the question.

Mr. Chambers: Exception.

A. We got estimates not with a view of putting the furnaces on one side, but for the purpose of having contractors rebuild the benches.

The Master: As they are?

The Witness: Well, if they were rebuilt in 43406
that way the cost would be about the same.

The Master: What did you get estimates for, to rebuild them as they are or as recommended by Mr. Little?

The Witness: As they are.

The Master: Did you ever contemplate rebuilding them in the manner suggested by Mr. Little?

The Witness: We never have.

The Master: For the reasons you have given?

The Witness: Yes, there would be no economy, there would be nothing in making the change.

Q. Would you have to use practically the same 43407
amount of furnace fuel?

A. We would, there would be no difference.

Q. And would there be more clinker and less ash with the use of the higher temperatures?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and speculative.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. That is right.

Q. That is, using one furnace would require a higher temperature?

The Master: Is it any more speculative than Mr. Little's testimony?

Mr. Chambers: Well, I don't want to answer that.

The Master: If I allow one set of speculative testimony don't I have to allow other testimony to meet it?

A. We have 60 benches in there, and the experiment was tried three or four years ago to see what
43409 effect it would have.

Q. That is, you actually did this to some of the benches?

A. Yes, three or four years ago, I don't recall the exact date, but we tried it to see what effect it would have in so far as distribution of heats and the maintaining of furnaces, and as a result of that experiment we gave it up.

Q. That is, the results of those experiments bore out these various things you have stated?

A. That is right.

Q. Did you find that with the use of the higher temperatures there was increased damage to the ma-
43410 chines?

A. Well, no, there would not be an increased damage, except that there would be an increased repair to your furnaces as a result of the hard clinker formation.

Q. Now, from the practical operating point of view would there be any advantage in using one set of hydraulic mains, as recommended by Mr. Little, who said that one side should be discarded?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. There would not.

Q. Why not?

A. We have hydraulic mains on both sides of the house. We could convert the house into a single hydraulic main system in ten minutes, by raising the water level in the dip pipes on one side. When that plant was built, just before it was built, benches of the same size were built by the New Haven Gas Company, and single standpipes were installed, and they had an awful lot of trouble as a result of all the gas 43412
passing through the full length of the retort on the one side and going up the one side. The single standpipe proposition was put in by them as a matter of economy and construction cost, and as a result of their experience we put in the double standpipe system. Since that time on several occasions we have undertaken to force the gas through one of the standpipes and thereby do away with one, and save the labor on one side, and we have always found that it required more labor to take care of the standpipe on one side than by taking care of two, one on each side. In so far as operation is concerned it is infinitely better to have the two standpipes than the one.

Q. Is there any adverse or unfavorable effect on 43413
the gas of being compelled to travel further in the hot retort under the one-main system?

A. It has a degrading effect in that the higher illuminants are broken down into marsh gas, and the marsh gas is broken down into hydrogen and carbon.

Q. From the practical operating viewpoint would there be advantage and economy to the company in charging and discharging from only one side as ad-

vised by Mr. Little, instead of from both sides as now in vogue?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, calling for a decision on a question which the Court will probably have to decide, advantage and economy.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. There would be no advantage, and there would be a disadvantage. You could not operate one machine of that size pushing it from one side, inasmuch
43415 as the machines would become so heated that you could not go down the entire side of the house and do the discharging. It would require two operations just as now, you would have to have two machines operating in order to do the work in a house of that size. One advantage of pushing from opposite sides is that the thrust is not always one way on the bench. In other words, if you are pushing from right to left all the while the tendency is to force the bench out on the opposite side, whereas pushing in an opposite direction you have a retarding effect of one push against the other, which has a tendency to keep the set in better shape. If it was a smaller house that could prob-
43416 ably be done, but with a house of that description at Astoria you could not push from the one side unless you were operating the two machines just as we are doing now.

Q. Mr. Little, in the report to which I have referred, submitted on behalf of the defendants, advised the use of de Brouwer projector, and a Fides-Meldridge, or Gibbons chain type of charger. Have you in behalf of the Astoria Company investigated the merits of and tried any of these recommended machines at Astoria?

A. We have investigated the de Brouwer, and the

Hides-Aldridge. We have a de Brouwer, which is a centrifugal machine which charges the coal in with a high speed belt running at a speed of about 6,000 feet a minute, which projects the coal into the retort. We have one of those machines, we keep it in reserve, and have tried it out a number of times.

Q. Have you also investigated this so-called Gibbons chain type?

A. I have not investigated the Gibbons. The de Brouwer for a small operation is an extremely good, simple type of machine.

Q. You have a de Brouwer at 14th Street? 43418

A. We have a de Brouwer at 14th Street. We put the first de Brouwer that was ever brought to this country in at the 14th Street station. We also have a de Brouwer at the Central Union works. We have also this de Brouwer at Astoria. It requires in the operation at Astoria about two minutes to charge a retort with a de Brouwer machine, and one minute with a West machine. When we are running at full capacity it would require the full period of time, working every minute in the day, to charge with this machine. There would not be one moment that we could spare.

The Master: With which machine? 43419

The Witness: The de Brouwer. In full operation we would have to charge thirty retorts per hour.

Q. How long are these retorts at Astoria?

A. Twenty-one feet nine inches.

Q. Does that require a high belt speed?

A. It requires a high belt speed in order to project the coal to the far end of the retort.

Q. And that means high belt repairs?

A. It does.

43420 George E. Woods, Direct.

Q. Did you find that the de Brouwer facilitates the laying of an even charge at the far end, or did you have difficulty in that respect?

A. That is what requires a high speed, in order to force the coal to the far end of the twenty-one feet nine inches.

Q. How about the head room, and the refilling of the coal hopper—how often do you have to fill the coal hopper?

A. That has to be filled every four retorts.

Q. And that slows down operation?

43421 A. Yes.

Q. Does that situation require an additional man on each shift?

A. It does.

Q. About how much less coal per twenty-four hours would you say was charged with a de Brouwer machine, which you have on reserve, as compared with the West machines which you ordinarily use?

A. About three per cent. In other words, there would be some slight economy in repairs. It is a smaller machine and there would be less repairs on the de Brouwer type of machine, but the loss in operating labor as the result of decrease in production, which
43422 would increase all the balance of the labor, retort house labor, would more than off-set the repair labor saving.

Q. So that having both the de Brouwer and the West machines, you use the de Brouwer as a reserve and the West for regular operation?

A. We do.

Q. And in your judgment that is better?

A. That is right.

Q. Mr. Little stated that the Astoria exhausters were too far away from the retort house to get good regulation, and for this reason he said that the com-

pany should install a retort house governor. What are the facts as to this and its bearing, if any, on economy and efficiency in operation?

A. The exhauster house and the location of the exhausters was laid out with a view to having it as far away from the retort house as could be conveniently done, because these are positive exhausters, and give impulses, every revolution gives an impulse, and the greater the distance from the retort house the less those impulses are shown in the retort house.

Q. That is, it levels the gas pulsations?

A. It levels the gas pulsations. In the regulation 43424
of the exhauster as to its speed, etc., that is from a pipe that leads directly from the retort house proper, and the regulation is instantaneous, it is within less than half a second before you get the regulations from the retort house to the exhauster house. There would be a disadvantage in having the exhauster nearer the retort house, and there would be no advantage in having a governor where you have a regulation such as I have described.

Q. There is no gas flow in this separate line from the exhauster house?

A. None at all.

Q. It is purely a matter of regulation? 43425

A. That is right.

Q. So you would say that the exhausters could be even much further away than they are now and still have practically instantaneous regulation from this line?

A. Yes.

Q. Mr. Little in his report, and also in his testimony, criticises the company with respect to the employment or nonemployment of what is known as cadet engineers. Are there any cadet engineers employed at the Astoria plant from time to time?

A. There are.

Q. Does the Consolidated Gas Company and its affiliated companies also employ cadet engineers?

A. They do.

Q. What are the qualifications required of an applicant for appointment as cadet engineer?

A. He must be a graduate of a technical college, having a degree of either mechanical or chemical engineer.

Q. What is the nature of his services under your system?

43427 A. Why, a new engineer is employed in the hopes that he will develop after some years of training into a gas engineer who will then have had both practical and technical education. When we employ a cadet engineer his duty is to do such odd jobs as a superintendent may give him, without any responsibility whatever for the first year. After that period of time he is given some little responsibility, and may act as an assistant foreman—

Q. Is he given the title of assistant foreman?

A. No, he is just a sort of assistant foreman. He still retains his position as cadet engineer, but is given some authority such as an assistant foreman or pos-

43428 sibly a foreman might have. After about two years he is then given some authority, and after another year, if there is a position open or he is in line for promotion there is then a chance for his becoming an assistant superintendent.

Q. After two or three years he is given charge of the operation of some part of the plant?

A. Yes.

Q. What is the rate of compensation paid to cadet engineers employed by the Consolidated Gas Company?

A. Prior to about 1915 we paid them about $70 a

month. Now we pay them about $100 a month when we engage them.

The Master: My recollection is that Plant A could hardly produce much more than Mr. Woods was producing in it, according to Mr. Little, except for some little changes, but that Plant B had not been used to capacity. I think you agreed with that in your original testimony, that you did not use Plant B to capacity.

The Witness: We have not made as much gas at Plant B as we might. We did not have the coal, and at one period of time the Government 43430
was operating, so we were not in position—

The Master: I think you also told me that you did not operate Plant B to capacity in order to favor some other plant.

The Witness: That is right. We did not operate it to full capacity in order that we might make some gas over here.

The Master: And that plant, you say, is Plant B?

The Witness: It might have been either Plant A or Plant B. In all probability in our general operation both plants A and B might be—

The Master: Plants A and B are rated at 43431
20,000,000?

The Witness: 10,000,000 each.

The Master: Do you recall what you actually got out of them in 1918?

The Witness: I don't recall the figure now. In 1918 they were not up to capacity because of a shortage of coal, for one reason. In 1918 part of the B plant was being used by the United States Government.

Q. That was for carbon operation?

A. Yes.

The Master: What did Mr. Little say you ought to get out of plants A and B, do you recall?

The Witness: As I recall, he testified that we could make about 22 to 24,000,000? I think he talked about 24,000,000 in some statement.

The Master: I think he said he could do a little better than 30,000,000 out of the water gas plant, didn't he?

The Witness: He did.

The Master: In other words, he said he could
43433 produce more than 50,000,000 at the three plants.

The Witness: My recollection is that he talked of 48,000,000 out of the water gas plant.

The Master: Assuming now that you leave aside all of these other considerations that you say entered into the reduced output in 1918, what in your judgment is the maximum working output, average for the year, in the Astoria plant?

The Witness: 50,000,000 cubic feet.

The Master: A day?

The Witness: A day.

The Master: For how many days?

The Witness: We could operate on 50,000,000
43434 for some considerable period of time, I should say for possibly 250 days. You see, in the retort houses there would have to be repairs going on—

The Master: Yes, I have that in mind. What I wanted to get from you was your judgment as to the maximum yearly output, leaving aside all other conditions.

Mr. Ransom: You mean assuming that they could dispose of the gas during the summer, how much could they make in twelve months?

The Master: No, assuming all these conditions, such as the reduced amount they have got

to make in the summer, what would you say Astoria ought to produce in the course of a year? Would you say 250 times 50,000,000, or more than that?

The Witness: No, I would not say that. What you have in mind now is our other plants in operation?

The Master: No, assume you did not have the Standard and the New Amsterdam to draw from, or the Central Union, or anybody else that you draw from, and you simply had the 21st Street and 91st Street plants running as you have been 43436
running them and Astoria, and assuming that you were operating 21st and 99th Streets and Astoria to the limit to get all that you could out of them, what would you say you could get out of Astoria?

The Witness: I should say somewhere between 220 and 230 days.

By the Master:

Q. At 50,000,000?

A. At 50,000,000.

Q. In other words you think not over 230 times 50,000,000?

A. No, I think that would be the limit. 43437

Q. Disregarding favoring other plants and every other consideration.

A. You must take into consideration in doing it—you asked me to eliminate the New Amsterdam Company. If we were operating to that extent we would require the New Amsterdam Gas Company to make more than their own requirements for the purpose of enriching the coal gas at Astoria.

Q. Then, as I understand your statement, if you operated the two coal gas units, A and B, to capacity, you would not have enough enriching material for the water gas plant to enrich it?

43438

A. We would not.

Q. And you would have to operate New Amsterdam to some extent?

A. We would.

Q. And you would have to operate it beyond its capacity?

A. No, beyond its requirements.

Q. Not beyond its capacity?

A. No.

Q. You could always operate the A and B plants in Astoria and have the gas enriched at New Amster-

43439 dam?

A. We could by having them up to their capacity, which would be beyond their requirements at times.

Q. But it is a perfectly feasible thing to do?

A. That is right.

Q. To summarize what I have been trying to get at, it is your testimony that when I consider Mr. Little's testimony as to the possibility of output at Astoria on the basis that I have been indicating to you, 230 times 50,000,000 cubic feet is all that you could hope to get out of Astoria in a year?

A. That would be the limit.

Q. That in your judgment would be the limit?

43440 A. That is right.

Q. That you did not do in 1918, I take it, from what you have said?

A. No, we did not. We might not do it now. We have 4 days' coal supply at Astoria today.

By Mr. Ransom:

Q. But on any such basis of operation as the Master has referred to, that is, without the New Amsterdam and the Mutual and Standard plants you could not meet your maximum winter's requirements?

Mr. Clark: I object to that question.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial and not rebuttal.

The Master: Objection sustained.

Mr. Ransom: Your Honor has assumed a basis of calculation that is quite unsound, it seems to me, because while if you could store gas like you do automobile tires you would get a result which would come within what your Honor has asked. The situation of a company like a gas company, or an electric light company, or a transportation company, is that it has to meet the peaks.

The Master: I understand that.

Mr. Ransom: They cannot store gas for any length of time. 43442

The Master: You will probably have something to argue about that when I come to express my views in oral argument. Don't do it now. I will say this at this point, however, that I do not think the Astoria Company in delivering gas to the Consolidated Company can charge the Consolidated Company for all of the investment and the taxes on all of that property for part of their production.

Mr. Ransom: We will thresh that out later.

The Master: I think that is too much. That is what is in my mind.

Q. Are you in fact having in curtail coal-gas production now because of lack of coal? 43443

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal.

The Master: Objection sustained.

Mr. Ransom: That becomes very pertinent in view of Mr. Little's proposal on behalf of the defendants to add various means of operation which call for the addition of enormous quantities of more coal.

The Master: I will let you ask a general ques-

tion as a rebuttal question, has occasion risen from time to time when you have had to limit production on account of coal.

Q. Mr. Woods, has occasion arisen from time to time when you have had to curtail coal gas production at Astoria because of lack of coal?

Mr. Clark: I object to that.

Mr. Chambers: I object to it as irrelevant and immaterial and not proper rebuttal.

The Master: Objection overruled.

Mr. Clark: Exception.

43445 Mr. Chambers: Exception.

A. Yes.

The Master: As a matter of fact, the witness has already said what Mr. Ransom tried to get out, when he said that they only have 4 days' supply of coal now.

Mr. Clark: I move to strike out that statement.

The Master: You can't strike it out now after I have referred to it in that way.

Mr. Chambers: Well, it was slipped in as not responsive to a question—

The Master: There are two very able counsel sitting here watching this testimony, and when

43446 I lay stress on something that has gone by some minutes before, and you think you have missed something, it is then too late for you to move to strike it out.

Mr. Chambers: Exception.

Mr. Clark: Exception.

The Master: If I had not specifically mentioned it you would not have known that it went in possibly.

Mr. Chambers: I don't know whether that was taken down or not, it was in the nature of a side remark, and not an answer to his question.

Q. Referring to the testimony of the witness Little and the witness Hine on behalf of the defendants in relation to the 14th and 42nd Street plants, has it been your experience, Mr. Woods, that in the quantity of coal carbonized per thousand cubic feet of gas, and in the quantity of coal tar, ammonia and other residuals produced, that the 14th and 42nd Street plants have yielded operating results only slightly inferior to the Astoria coal gas plants?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal. 43448

The Master: Objection sustained. That appears from the testimony now in the record, if I can take it at all. In other words, the operations of 14th and 42nd Streets are in the record.

Mr. Ransom: The defendants have put in adjusted, revised, attenuated and abbreviated—

Mr. Chambers: I except to that characterization of our competent testimony.

The Master: I cannot have Mr. Woods testify to record facts.

Mr. Ransom: Your Honor has not permitted the putting in of operating results at any of these plants during the present winter. The operating 43449 experience of the 14th and 42nd Street plants prior to the war period are not in evidence except these revised and adjusted calculations which Dr. Weber, and I think Mr. Frank, and Mr. Cohen made out, and you saw what Mr. Cohen did and what he omitted.

The Master: I am very clear that that answer calls for a conclusion of this witness.

Mr. Ransom: Isn't he competent to make such a conclusion?

43450 The Master: Not upon facts that can be deduced from the record.

Mr. Ransom: You have allowed Mr. Hine and Mr. Little—Mr. Little put in no operating figures for 14th and 42nd Streets, not a shred of a figure.

The Master: I will take Mr. Woods' opinion to meet whatever opinion Mr. Little gave. If Mr. Little said in substance that the 14th and 42nd Street plants were obsolete plants, or ancient, antiquated or anything else, you can ask Mr. Woods whether they are obsolete, ancient or antiquated.

43451 Mr. Ransom: Both Mr. Hine and Mr. Little, especially Mr. Hine, when confronted with the fact that the company actually had to have the gas made at these two plants, then said that even if the company had to have the gas that the operating results there were such as to make them uneconomical, in his judgment.

The Master: Based upon the record facts.

Mr. Ransom: Based upon nothing that they put in evidence, nothing that has been put in evidence.

The Master: Oh, yes.

Mr. Chambers: He is incorrect.

43452 The Master: I think that calls for a conclusion. I will let you ask Mr. Woods whether those plants are economical plants.

Mr. Clark: He doesn't want to ask that.

Mr. Ransom: Here is the situation as to what we propose to show, that with respect to materials, and with respect to residuals, there is not much difference. It is true that the labor cost at 14th and 42nd Streets per thousand cubic feet of gas are higher than at Astoria, because they haven't got the most up-to-date labor saving machinery, but that from the viewpoint of operating

for three months in the winter it is more economical to have a higher labor cost for labor that is there only during the period of reserve operation, than it would be to have labor saving machinery of the most modern sort which involves idleness of that machinery during the summer time.

Mr. Chambers: This is not testimony, is it?

The Master: I am going to let you ask Mr. Woods substantially a line of questions to the effect that witnesses for the defendants have testified that the increased labor cost over there 43454
makes them uneconomical plants, and I will take his view about it.

Mr. Chambers: That was not the sole reason, that was one of them.

The Master: I will see what Mr. Woods says about it.

Mr. Chambers: That was a small consideration.

The Master: I will take this kind of a question: The witness Hine—I will put the question.

The witness Hine and the witness Little, Mr. Woods, have testified in substance that the 14th and 42nd Street plants ought to be discarded be- 43455
cause they cannot be economically operated for labor and other reasons. Now, I will have your views about it as an expert.

The Witness: Insofar as yield per pound of coal, production of tar—

Mr. Chambers: Just a minute. I am going to object unless he sticks to the question.

The Master: He is sticking to the question. I will let him give it the same way that I let Little give it.

Mr. Chambers: I object to it as incompetent.

43456

The Master: Go ahead.

Mr. Chambers: He is going to spin some theory here.

The Master: Well, I let your witnesses spin theories, too.

Mr. Ransom: This is a fact.

The Master: Go ahead, Mr. Woods.

Mr. Chambers: Exception.

The Witness: Insofar as the production of gas per pound of coal, the production of tar and ammonia from a pound of coal, there is very little difference between the results at 14th and 42nd Street stations and the Astoria plant. The coke for sale is approximately about the same.

43457

Insofar as the labor conditions are concerned, the labor costs are higher at the 14th and 42nd Street plants than at Astoria; but in view of the period of time which these plants are being operated we have not felt justified in spending an enormous amount of money in putting in labor saving devices—

Mr. Chambers: See the viciousness of the answer. He says "enormous"—what is an enormous amount of money, and the production of gas per pound?

43458

The Witness: The interest on the amount of money that would have to be spent for this purpose would be in excess of the excessive amount of labor.

Mr. Chambers: I object to that and move to strike it out.

The Master: Judge Ransom, I think I will not take any more on it, because I am quite clear that the question of the economical operation of these plants is not at all important in this case.

Mr. Ransom: I agree with your Honor.

The Master: For this reason—

Mr. Ransom: I may not agree with the reason, but I agree with the fact.

The Master: For this reason, which appeals to me: The rate which a Gas Company can charge for gas must be based upon an economically operated plant. You cannot fix a rate on what it would cost to operate 14th Street. You must concede that, because it is not up-to-date, and has not labor saving devices.

Mr. Ransom: In determining whether a plant is economically operated you have got to take into account both the operating cost, labor and materials, and interest on the investment. Now, it is true in the view of the complainant, and Mr. Woods has the figures to prove it, that although cost of labor and material, that is, the cost of labor is higher per thousand cubic feet at these two reserve plants, it is more economical operation, you get the reserve quantity of gas during the winter for less money to the consumer than if you had a completely modernized plant there with a lower labor cost but with a higher interest on the investment. 43460

The Master: I am going to get at it this way: What would it cost to put in the necessary labor saving machinery in the 14th and 42nd Street plants? 43461

Mr. Chambers: I would like to ask if that answer is stricken out?

The Master: No.

Mr. Chambers: Exception.

The Master: What would it cost to bring those plants up-to-date as modern plants?

Mr. Chambers: I object to that as incompetent, not proper rebuttal and not a feasible proposition.

The Witness: I would say a million dollars.

43462 George E. Woods, Direct.

The Master: That million dollars would increase production?

The Witness: No.

The Master: The capacity would remain the same?

The Witness: It would remain the same.

The Master: What is the capacity of 14th and 42nd Street?

The Witness: Nine and a half million.

Q. But you would be able to produce that nine and a half millions considerably cheaper than now?

43463 The Witness: We could.

Mr. Chambers: This is over my objection and exception.

The Master: How much cheaper?

The Witness: I should say fifteen cents, probably.

The Master: As against which there would be offset the interest on this million dollars?

The Witness: That is right.

The Master: All right, now, go ahead.

Mr. Chambers: It is not the labor saving devices that are needed, they would have to rebuild the whole plant, we contend.

43464 Mr. Ransom: There would have to be considerable rebuilding.

The Master: I suppose in putting in these labor saving devices there would have to be considerable rebuilding.

The Witness: There would be.

The Master: That is included in your million dollars?

The Witness: Yes, sir.

Q. Mr. Woods, referring to the testimony of the witness Hine, and the witness Little on behalf of the defendants, from your knowledge of the output of

gas in the year 1918, and during the first ten months of 1919, by the Consolidated Gas Company, and the required plant capacity, both operating and reserve, what is your opinion as to whether the 14th and 42nd Street manufacturing plants of the Consolidated Gas Company, so far as manufacturing was concerned, were reasonably necessary in the years 1918 and 1919?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Why?

Mr. Chambers: I don't think he has included 43466
the essential bases there for such an opinion.

The Master: What is it you want included?

Mr. Chambers: I don't think I ought to advise the other side as to what would cover a complete question.

The Master: You don't think so?

Mr. Chambers: No.

The Master: Answer the question, Mr. Woods.

Mr. Chambers: Exception.

The Master: Counsel for defendant having been given the opportunity to add to this question any element that they think should be included, and declining to do it, I will take the answer. 43467

Mr. Chambers: Exception.

A. The 14th and 42nd Street plants were necessary reserve plants for the conduct of the company's business.

Q. Having regard to reasonable reserve capacity of manufacturing plants, could the 14th and 42nd Street plants, in your judgment, have been eliminated in 1918 and 1919, and a reasonable manufacturing capacity maintained?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal.

The Master: Why is it incompetent, irrelevant or immaterial, or why is it not proper rebuttal?

Mr. Chambers: Well, in the first place, we were not permitted to ask a similar question to that.

The Master: Why isn't it proper rebuttal?

Mr. Chambers: I put that question to Mr. Edgerton and your Honor ruled it out, substantially that.

The Master: Why isn't it proper rebuttal?

43469 Mr. Chambers: Because you would not allow us to produce any such testimony in that way.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Master: Of course I refuse to allow strangers to a situation to testify to something they didn't know anything about.

Mr. Chambers: He made an examination in 1906.

The Master: Mr. Woods has been operating these plants for years, and he is talking about his own knowledge.

A. They could not.

43470 Q. Mr. Woods, during the fall or early winter of 1919, were the 14th and 42nd Street plants made ready for operation, and then placed under fire?

A. They were.

Q. On what date were they placed under fire?

A. One was on the 15th of December and the other on the 16th.

Mr. Chambers: Just a minute. When he asks that question I assume he means the winter of 1918-1919. Does he mean this present winter?

The Master: I don't know. Why didn't you find out. I was wondering, but so long as you had no objection to it I did not.

Mr. Chambers: The question is ambiguous. If it refers to the present time, and not the winter of 1918-19, then, of course, I object to it on the ground that it is not rebuttal, and is incompetent, irrelevant and immaterial.

The Master: The objection is too late. It is overruled.

Mr. Chambers: Exception.

The Master: Now, what year did you mean?

Mr. Ransom: I said during the fall or early winter of 1919. That is very clear I think.

Mr. Chambers: I move to strike it out on the 43472
ground that from the question you could not tell what winter he referred to.

The Master: Motion denied.

Mr. Chambers: Exception.

Mr. Ransom: I understood your Honor to say the other day that you would take any testimony of any date bearing on used and useful.

The Master: Yes, I will do that, but not as to what particular thing was done after the 10 months' period.

Q. Referring to the testimony of the witness Hine, would it in your judgment have been prudent and reasonable in the practical operation of the gas sys- 43473
tem of the Consolidated Gas Company to have eliminated and reduced the company's reserve manufacturing capacity in 1918 or the first 10 months of 1919, to 5% of any approximate figure above the previous year's maximum day's sendout?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and not proper rebuttal. I think I had better object to all the questions hereafter, because, because it seems to be a foot race here as to whether I will get in my objection in time or not.

43474 George E. Woods, Direct.

The Master: Well, what have we got to do with the Consolidated system, Judge Ransom?

Mr. Ransom: I did not say of the Consolidated System, I said the gas system of the Consolidated Company.

The Master: What do you mean by that?

Mr. Ransom: I mean the Consolidated Gas Company.

The Master: I will allow a question which will limit its application to the business of the Consolidated Gas Company and its manufacturing
43475 ability and ability to buy gas elsewhere.

Mr. Chambers: I make the same objection to the modification of the question.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. What would be your answer?

A. It would not have been prudent, and if there were ever a remote possibility of the officials of the Consolidated Gas Company establishing a 5% basis they would immediately have a new engineer of manufacture, I can tell you that right now.

Mr. Chambers: I move to strike out the answer as not responsive.

43476 The Master: I will let it stand.

Mr. Chambers: Exception.

Q. Mr. Woods, with the new water plant completed at Astoria, and the 14th and 42nd Street plants still in use, the Consolidated Gas Company will have what per cent of reserve of manufacturing capacity, assuming no further increase in the maximum day's demand?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper rebuttal and speculative.

The Master: Objection overruled.

Mr. Chambers: Exception.

 43477

A. Including the plants of the Astoria and Consolidated Gas Companies, 14th, 42nd, 99th and 21st Streets, and if the maximum demand is no greater than it has been at present, the reserve will be about 23 1/2 per cent.

Q. Mr. Woods, referring to the testimony of the witness Hine and the claimed lack of need for gas manufactured at the 14th and 42nd Street stations, on how many days of the present winter, that is, the winter of 1919-20, has the output of the Consolidated Gas Company so far exceeded 90,000,000 cubic feet a day?

Mr. Chambers: I object to that. Now, he has 43478
got to this present winter. I object to it as incompetent, irrelevant and immaterial and not proper rebuttal.

The Master: I don't quite understand the question.

Mr. Ransom: On how many days has it gone above 90,000,000 cubic feet?

The Master: Where?

Mr. Ransom: The Consolidated Company's requirements alone I am asking about now.

The Master: Requirements?

Mr. Ransom: Yes.

The Master: Well, it has been over 90,000,000 43479
for some years, hasn't it?

Mr. Ransom: I am not asking about all these companies, I am asking about the Consolidated.

The Master: The Consolidated's requirements is what it sells, isn't it?

Mr. Ransom: Yes.

The Master: Hasn't it gone over 90,000,000 a day, the sales?

Mr. Ransom: Yes.

The Witness: The sendout is as high as 99,000,000, for the Consolidated Company alone.

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Mr. Ransom: I am trying to find out how many days the Consolidated Company's send out has exceeded ninety million during the present winter.

The Master: I don't think that is rebuttal.

Mr. Ransom: It seems to me that nothing could more definitely indicate—well, I will take the system as a whole.

The Master: No. Counsel has undoubtedly, from the position taken by him, reached the conclusion that he would rather not take the time necessary to prove operating results since the first
43481 of November, 1919, and conditions which have arisen since. I am convinced that counsel's failure to go into these matters is due entirely to my suggestion of the time—

Mr. Ransom: It surely is.

The Master: And the necessity for it.

Mr. Chambers: I don't want to subscribe to that.

The Master: I don't care what you subscribe to, Mr. Chambers, I am stating it on the record, and I am convinced from what I have seen that counsel for the complainant have declined to make a direct application to open up the case for
43482 fear that the case would take an interminable length of time to complete, in the light of past experience. I am between two minds, as to whether I am glad or sorry that they have decided to do that. I am glad of it because the end of this case looks in sight, where it could not possibly be in sight for some months if it is opened on direct application. I am sorry in a way, because from questions asked it would indicate that experience during this winter might be very useful information. I am deciding the question,

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therefore, presented to me, purely as a question of law as to whether it is rebuttal.

Mr. Ransom: We have not proved—your Honor has correctly stated the reason we have not undertaken to prove financial results, cost of making gas, for any period subsequent to October 31, 1919. We stopped our proofs on that as of that date so far as financial results, so far as the cost of making gas is concerned. The defendants in their case have undertaken to say that certain portions of the company's plant, for example, the 14th and 42nd Street plants principally, and perhaps also the Astoria plant, are not 43484
necessary and should not be included in the rate base, as they call it, which your Honor will be called upon to find in this case. They have said that these plants were not necessary in 1918 and 1919 and are not necessary now because the company did not need them, did not need to have more than a five per cent or thereabouts reserve manufacturing capacity. Now, what I am proposing to show is this, that both from the viewpoint of 1918, and from the viewpoint of 1919, and the viewpoint of today, their calculations as to what the company needed for reserves are entirely unsound, and have been from the viewpoint of 43485
manufacturing capacity alone, leaving out any reserve, that the actual experience has shown that the plants which they had as reserve plants have become actually needed as manufacturing plants, even aside from reserves, so that the elements of reserve has been forced to a practically negligible figure, and that the company is in fact having to build this new plant at Astoria in order to provide reserves, assuming even that there is no further increase in the maximum day's demand and the sales of this company.

43486 George E. Woods, Direct.

Mr. Chambers: I object to counsel testifying.

Mr. Ransom: The best possible refutation of the testimony of Hine and Little that the company did not need these plants as reserve in 1918 and during the early part of 1919 is what is taking place and what has taken place. It is strictly rebuttal.

Mr. Chambers: You can trot this workout horse out for a trial heat, but it does not make them used and usable.

Mr. Ransom: Mr. Chambers and Mr. O'Brien
43487 have been kept warm with these plants this winter.

Mr. Chambers: You can trot them out while the case is pending, but when the case is over it is not hard to prognosticate what will happen.

The Master: I will take this answer. I think as against the guess of Hine and Little I will take a statement of actual conditions.

Mr. Clark: I object to that without our being able to show the rest of the figures, or their showing the rest of the figures, just to take one feature of operating conditions that may prove their contention, without going into the whole matter. It
43488 is very fragmentary.

The Master: I will take the answer.

Mr. Chambers: Exception.

Mr. Clark: Exception.

Mr. Chambers: I take an exception to the Master's characterization of our testimony as a guess.

A. Fifteen days.

Q. That is up to and including what date?

A. February 27th.

Mr. Chambers: I move to strike out the answer as not proper rebuttal, and on the grounds urged when the question was asked.

The Master: Motion denied.

Mr. Chambers: Exception.

Q. Considering the 99th, 21st, 14th and 42nd Street plants of the Consolidated Gas Company, the Astoria plants, water and coal, and the 10,686,000 cubic feet from the portion of the Mutual Company's plant used in making gas for the Consolidated Company, what has been during the present winter the combined capacity of the Consolidated Gas Company's plant?

The Master: I cannot take that, because there isn't any proof in this record that the Mutual was 10,000,000. 43490

Mr. Ransom: Oh, yes, there is. That was brought out very fully.

The Master: Oh, you mean the capacity, not the amount delivered?

Mr. Ransom: The part of capacity, as testified to by Mr. Carter.

The Master: For what year?

Mr. Ransom: Take the year 1919. That is a certain portion of the Mutual plant which he testified to as regarded as making gas for the Consolidated Company.

The Master: Under this agreement which is in evidence? 43491

Mr. Ransom: Under the agreement which is in evidence.

The Master: Let us hear the question again. (Question read.)

The Master: How has the present winter changed from last winter? Why can't I figure that out as well as Mr. Woods? What is the point of your question?

Mr. Ransom: I wanted to have it in the record in this connection.

The Master: Objection sustained as not necessary.

Mr. Ransom: May I state, subject to correction, that it is 104,186 M cubic feet?

Mr. Chambers: I object to that and move to strike it out. It is most unfair.

The Master: Motion denied. I have been figuring roughly in my mind. What is the terrific harm to the defendants if counsel states that that is what he claims, and if the Master figures it in own mind, without having the precise figures?

43493 Mr. Chambers: I will stand on my objection, because I do not think there is any such figure in for the Mutual, for one thing.

Q. As to this 15 days, up to and including February 27, 1920, are you able to state the sendout of the Consolidated Gas Company on each of those days, and the excess, if any, of the capacity over sendout, and the per cent of capacity over sendout on each of those days?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. Ransom: I am asking him if he can state it.

43494 The Master: All right, you can state that.

A. I can.

The Master: When you state what the maximum was I can do it myself from the figures in the record, if they are in the record at all and if not I cannot take it.

Q. What was the maximum sendout—

The Master: Give the days of the maximum sendout.

Mr. Chambers: In 1920?

Mr. Ransom: 1920.

The Master: Maximum sendout on those days.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial and not proper rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. On December 17, 1919, the sendout of the Consolidated Gas Company was 92,475M cubic feet.

On December 18	95,571M	cubic	feet;
On December 17	91,934M	"	"
On January 3, 1920	90,390M	"	"
On January 5	95,300M	"	"
On January 14	93,102M	"	"
On January 15	94,586M	"	"
On January 16	97,405M	"	"
On January 19	94,857M	"	"
On January 20	90,531M	"	"
On January 26	71,727M	"	"
On January 31	99,243M	"	"
On February 16	95,946M	"	"
On February 26	92,651M	"	"
On February 27	96,705M	"	"

43496

The Master: Of course, there is no way of telling how much was actually consumed by consumers on those days?

The Witness: No, your Honor.

43497

The Master: Or how much was actually made on those days, there is no way of telling that?

Mr. Ransom: Not day by day.

The Master: That could not be told?

The Witness: No.

Q. What was the highest week's requirement during the present winter, that is, seven consecutive days?

Mr. Chambers: I make the same objection.

The Master: You say requirements, you mean sendout?

Mr. Ransom: Sendout.

43498 George E. Woods, Direct.

A. I haven't those figures with me. I think that refers to the system, doesn't it?

Q. No, you gave me some figures on that, if I have got them here, let us see.

Mr. Chambers: I make the same objection.

Mr. Clark: This is all over our objection as to 1920?

The Master: Yes.

Mr. Clark: Exception.

Q. This information is some that you gave to me.

The Master: I am not at all clear that this
43499 is strictly rebuttal, but I have concluded that it ought to be in the record in the interest of justice.

Mr. Ransom: It seems to me it is strictly rebuttal.

Q. Can you now give us the largest sendout for seven consecutive days during the present winter?

A. Yes. For seven consecutive days?

Mr. Chambers: I make the same objection as last made.

The Master: You have picked out the highest seven consecutive days, I suppose?

Mr. Ransom: Yes.

43500 Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: I will take it.

Mr. Chambers: Exception.

A. The average was 92,280M cubic feet.

Q. Per day?

A. Yes.

Mr. Ransom: That is also offered in rebuttal on the question of the claim made by some of the blueprints and testimony of excess holder capacity, because when your Honor takes into account the relation between total manufacturing

capacity and the maximum days, and the fact that over seven consecutive days the average was 92,200M cubic feet, why, that has a bearing on the question of—

The Master: Oh, yes, I think all these things have, but I still am not entirely clear that it is rebuttal.

Q. During the winter of 1919-20, Mr. Woods, have you had a variation in the Consolidated sendout within a period of three days in excess of 24,000,000 cubic feet?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal. 43502

The Master: I will allow it.

Mr. Chambers: Exception.

A. On Saturday, February 14th the sendout was 71,559M cubic feet. On Sunday, February 15th the sendout was 82,654 M cubic feet. On Monday, February 16th it was 95,946M cubic feet, the difference between Saturday and Monday being 24,387M cubic feet.

By the Master:

Q. What regulates that sendout?

A. People putting the gas on and off. 43503

Q. In other words, you mean that as the gas is used, as you find gas being used, you have to keep making more gas?

A. Absolutely.

Q. In other words, if the holders go down you have got to keep filling them up?

A. Absolutely.

Q. And that changes the condition of the sales?

A. From our stock on hand we can tell by our hourly rate, and the effect on the holders, as to what is happening on the district. Of course, we immediately have to get busy to take care of this demand.

43504

Q. What I want to get clear in my mind is that your sendout has a direct relation to the use by consumers?

A. Absolutely, that is the sendout.

Q. For instance, on this Saturday you did not reduce your sendout because you did not feel like operating, or something like that?

A. Oh, no, this sendout is gas delivered on to the district.

Q. Am I right in my understanding that the sendout was reduced on—that means the gas that goes
43505 out of the holder that we are talking about?

A. Yes, sir; on to the district.

Q. Not what you had been getting from day to day?

A. No, sir.

Q. It is what is left in the holders?

A. That is right.

Q. That shows how much the people are using from day to day?

A. That shows the variation between the load.

Q. I asked you whether that indicated how much people were using, and you said no. I should imagine it did

43506 A. That is an indication of what the people are using, but we have no means of regulating that.

By Mr. Ransom:

Q. Mr. Woods, referring to the testimony of the witness Bemis and certain testimony and exhibits of the witness Weber in relation to the basis of division of the cost of carrying certain property and facilities owned by other companies to use in the manufacture or distribution of gas furnished to the consumers of the Consolidated Gas Company, and the criticisms made thereon, have you produced here an original of the report which you made to the Con-

solidated Gas Company and to the Executive Committee of the Board of Trustees embodying your judgment as to the basis of such a division and offering the basis of the action of the Executive Committee of the Board of Trustees in that respect?

A. I have and I did.

Mr. Chambers: I object to that.

Q. Is this such original?

A. It is.

Mr. Ransom: I offer it in evidence as rebuttal. They have criticised what the company did, the basis of the company's action, that they 43508
should have done something different, they have attacked the action of the Board of Trustees in this respect, and they have submitted their computations, elaborate computations of the witness Bemis and the witness Weber that some other basis should have been followed, and that the Board of Directors and Trustees should have done otherwise. Now, as establishing—

Mr. Chambers: I object to it.

Mr. Ransom: As bearing upon the good faith and the soundness of the Executive Committee action, the basis of the action which has been criticised.

43509

Mr. Chambers: Why not permit me to make an objection and withhold this great long speech. I object to it as incompetent, irrelevant and immaterial, not proper rebuttal and as a self-serving declaration and containing hearsay evidence.

The Master: I am going to sustain that objection, Mr. Chambers, but I will say to you now that I will permit Judge Ransom to ask Mr. Woods questions bringing out the statements made by him and his argument as to the division, the result of which will be his spreading on the

record the information he has got in this report, but I will not agree with you that this report is competent. Now, don't argue with me, Judge Ransom.

Mr. Ransom: Here is the situation. Supposing that we had done what Mr. Bemis or Dr. Weber did, namely, gotten up computations which exactly confirmed the division which was made.

The Master: Yes.

Mr. Ransom: You would receive them as sus-
43511 taining the committee action, I take it.

The Master: No. I took statements—

Mr. Ransom (interrupting): You took other computations from them to undermine it.

The Master: No. Here is the situation, Judge Ransom. I took the computation and statements of Bemis and of Little and of Sangster in the form prepared as a short cut of taking the testimony. Now, I will take this statement as prepared as a short cut of taking Mr. Woods' testimony, but I won't take this report as a report.

Mr. Ransom: I except to your Honor's ruling.

43512 The Master: You can ask Mr. Woods a series of questions which will indicate you are asking him the questions to bring out these figures, and I will then suggest of my own motion that I will take Mr. Woods' prepared statement for the purpose of saving time after he swears that he will swear under oath to these various data, just as Mr. Sangster and Mr. Little did.

Q. This statement, Mr. Woods, was prepared by you?

A. It was.

Q. The statements of fact therein set forth were known to you to be correct at that time?

A. They were.

Mr. Chambers: This is over my objection.

Mr. Clark: I object to it.

Mr. Chambers: Incompetent, irrelevant and immaterial, and I move to strike it out.

The Master: Overruled.

Mr. Chambers: Exception.

Q. And in so far as this document sets forth certain expressions of opinion, judgment and recommendation by you, these statements severally do set 43514
forth your opinion and judgment as of that date?

Mr. Chambers: I object to that, incompetent, irrelevant and immaterial, improper rebuttal.

Mr. Clark: I object to the question of what his opinion was at that time.

The Master: Overruled.

Mr. Chambers: Exception.

A. That is so.

Q. And it would be your present opinion on the basis of the facts herein set forth?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception. 43515

A. It would.

Q. And if I asked you a series of questions framed to call for each of the matters of fact herein set forth, you would state each of the matters herein set forth?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception.

A. I would.

Q. And if I asked you questions calling for the expression of your opinion, judgment and recommendation upon each of the matters of opinion and judg-

ment herein set forth, you would express such opinion?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception.

A. I would.

The Master: In other words, Mr. Woods, is it your testimony that the statements contained in this paper are correct?

Mr. Chambers: I object to that.

The Witness: It is.

43517 The Master: And if you were asked questions with reference to the matters herein stated, your statements would be exactly those contained in this paper?

Mr. Chambers: Same objection.

The Witness: They would.

The Master: Now, I am going to take this paper which is entitled, "Proposed division of the cost of carrying certain properties, including the Astoria tunnel, between the Consolidated Gas Company of New York, the Astoria Light, Heat & Power Company, the New Amsterdam Gas Company, the Standard Gas Light Company, the

43518 New York Mutual Gas Light Company, the Central Union Gas Company, and the Northern Union Gas Company, for the calendar year of 1919," as the testimony of this witness and direct that it be spread upon the record as if the witness had testified in the manner set forth in this paper, with the same force and effect and in the same manner that I took Mr. Little's testimony.

Mr. Chambers: I want to note an objection. I object to it as incompetent, irrelevant and immaterial, a self-serving declaration, not proper

43519

rebuttal, hearsay, secondary evidence, and it brings into the situation outside companies and gives a lot of figures which have no basis for them and there has no testimony been offered heretofore to substantiate them, a great many figures here that have no basis at all. The defendants are thereby deprived of the right to cross-examine witnesses concerning these figures.

The Master: Where do you get any notion that you are deprived of the right of cross-examination?

Mr. Chambers: Well, do you want me to tell you?

43520

The Master: Yes. This witness makes a statement. Now, what is his statement?

Mr. Chambers: It says here, "It is evident from the foregoing that some companies are carrying a reserve for other companies."

The Master: Yes. Who says that?

Mr Chambers (continuing): For which they should be reimbursed.

The Master: Who says that?

Mr. Chambers: Mr. Woods.

The Master: Why can't you cross-examine him about that statement?

43521

Mr. Chambers: I want to know—here are figures of the Central Union of 6.447 per cent. Now, where does he get that from? Is that from the books?

The Master: Why can't you examine him and find out?

Mr. Chambers: Well, you let it in.

The Master: He is making a statement of fact.

Mr. Chambers: That is true, but if he gets this from the books, I should know it.

The Master: But you will have ample time to

43522

cross-examine Mr. Woods about any statement that he makes.

Mr. Chambers: I know, but that does not make it competent. He figures in certain Northern Union and Central Union figures, and does he get them from their books, or where did he get them? And if he got them from their books, we have a right to examine their books and see if it is correct, or we have a right to have their books proved here in the proper way.

Mr. Ransom: If you will examine the defendants'—

43523 Mr. Chambers: And he forms its basis by many figures and percentages and purported facts which are not in the case as yet, and it is hearsay.

Mr. Ransom: If you will examine the defendants' exhibit on transfers of gas, the blue covered exhibit put in by Mr. O'Brien with respect to showing Central Union makes and sales, counsel will find—

Mr. Chambers: It says, see the viciousness of it, "The value of plant used for other companies," and it goes on and finds a figure here, "This represents an investment of five million and

43524 some odd," and to say that we are bound by that—

The Master: I have made my ruling on it.

Mr. Chambers: Exception. I could go on here and explain indefinitely.

The Master: I think it would be better to give the stenographer the original, giving the other side a copy to look at while this testimony is being written up.

Mr. Ransom: I was going to do that.

The table is as follows:

43525

(p. 1)

PROPOSED DIVISION OF THE COST OF CARRYING CERTAIN PROPERTIES, INCLUDING THE ASTORIA TUNNEL, BETWEEN THE CONSOLIDATED GAS COMPANY OF NEW YORK, THE ASTORIA LIGHT, HEAT AND POWER COMPANY, THE NEW AMSTERDAM GAS COMPANY, THE STANDARD GAS LIGHT COMPANY, THE NEW YORK MUTUAL GAS LIGHT COMPANY, THE CENTRAL UNION GAS COMPANY, AND THE NORTHERN UNION GAS COMPANY, FOR THE CALENDAR YEAR OF 1919.

43526

Plant Capacities:

Consolidated Gas Company of New York:

East 14th Street		5,000 M.
West 42nd Street		4,500 M.
East 21st Street		28,500 M.
East 99th Street		5,000 M.
Total Consolidated Gas Company		43,500 M.
The Astoria Light, Heat & Power Company:		
Coal Gas	20,000 M.	
Water Gas	* 30,000 M.	50,000 M.
Total Consolidated & Astoria Companies,		93,500 M.

43527

* Astoria Company reported as 45,000 M. to Public Service Commission for year 1918.

The additional 5,000 M. is the result of improvements and extensions (now completed).

(p. 2)

New Amsterdam Gas Company,		
Coal Gas	3,800 M.	36,000 M.

43528

Central Union Gas Company, Water Gas	8,000 M.	11,800 M.
Standard Gas Light Company,		10,500 M.
New York Mutual Gas Light Company,		24,000 M.
Total Other Companies		82,300 M.
Total All Companies		175,800 M.

Maximum Daily Requirements:

43529 During the winter of 1917 and 1918, the maximum day's sendout for these companies was 150,537 M. cu. ft.

I am therefore of the opinion that in determining the cost of carrying the jointly used properties that the maximum day's requirements should be based upon a sendout of 150,000 M. cu. ft.

Reserve Capacity in Excess of Requirements:

The combined capacity of all plants is	175,800 M.	cubic feet
The maximum requirements are	150,000 M.	"
Reserve Capacity	25,800 M.	"

43530 The reserve of 25,800 M. cu. ft. amounts to 17.2%.

(p. 3)

Proportionate use of the 150,000 M. cu. ft. based upon the sales of gas by th
ing the year 1918 (includes gas used by these companies):

Consolidated and Astoria Companies,	
New Amsterdam Gas Company (including East River Company)	
Standard Gas Light Company,	
New York Mutual Gas Light Company,	
Central Union Gas Company,	9.274%
Northern Union Gas Company,	6.447%

Allowing for reserve of 17.2%, the maximum plant requirement for each Com

Con. Gas & Astoria Cos.,	150,000 M.	× 54.264%	× 17
New Amsterdam Company,	150,000 M.	× 11.807%	× 17
Standard Company,	150,000 M.	× 7.360%	× 17
N. Y. Mutual Company,	150,000 M.	× 5.848%	× 17
Cent. & North. Union Cos.,	150,000 M.	× 15.721%	× 17
	150,000 M.	× 100%	× 17

It is evident from the foregoing, that some companies are carrying a reserv
which they should be reimbursed.

A summary shows the following:

(p. 4)

	Plant Capacity	Required with Reserve	Required from Other Cos.	For use of Other Cos.
Con. & Astoria Companies,	93,500 M.	104,186 M.	10,686 M.	
New Amsterdam Company,	36,000 M.	20,757 M.		15,243 M.
Standard Company,	10,500 M.	12,939 M.	2,439 M.	
N. Y. Mutual Company,	24,000 M.	10,281 M.		13,719 M.
Cent. & North. Union Cos.	11,800 M.	27,637 M.	15,837 M.	
Total,	175,800 M.	175,800 M.	28,962 M.	28,962 M.

Manufacturing Plants:

For the purpose of computing the charge for the joint use of manufacturing plants, I have adopted a unit cost of $152.60 per M. cu. ft. of daily capacity to cover plant equipment. I have added for land, in the case of the New Amsterdam Gas Company, $10.90 per M. cu. ft. of daily capacity, and in the case of the New York Mutual Gas Light Company, $53.125 per M. daily capacity, making the total unit cost per M., respectively, $163.50 and $205.725.

Value of Plants Used for Other Companies:

As shown in this report, 28,962 M. cu. ft. of daily manufacturing capacity is being carried by the New Amsterdam Gas Company and the New York Mutual Gas Light Company for the benefit of the Consolidated, Standard, Central and Northern Union Gas Companies. This represents an investment of $5,314,571.77, the carrying charge at 10% (the figure used in my previous reports) amounting to $531,457.18 per annum.

(p. 5)

Assuming that all of the excess capacity of the New Amsterdam Company's Plant is being used by and for the Central and Northern Union Gas Companies, the distribution of this $531,457.18 will be as follows:

Consolidated will pay Mutual for use of 10,686 M. c. f. daily capacity at $205.725 per M.	$2,198,377.55	at 10%	$219,837.74
Standard Company will pay N. Y. Mutual Co. for use of 2,439 M. c. f. daily capacity at $205.725 per M.	$ 501,763.27	at 10%	50,176.33
Central Union Co. will pay N. Y. Mutual for use of 593 M. c. f. daily capacity at $205.725 per M.	$ 122,200.65	at 10%	12,220.06
Total to New York Mutual Company			$282,234.13
Central Union Co. will pay to New Amst. Co. for use of 15,243 M. c. f. daily capacity at $163.50 per M.	$2,492,230.50	at 10%	249,223.05
			$531,457.18

43537

JOINTLY USED PROPERTIES.

The Cost of carrying the properties used jointly should, as heretofore, be divided on the basis of the ratio of each Company's demand upon the plants located on Long Island to the total demand.

(p. 6)

The following are the jointly used properties and the value thereof, as of January 1st, 1919:

Property of New Amsterdam & East River Gas Companies:

43538

Ravenswood (or 71st Street) Tunnel.		
Tunnel Mains, Head Houses, etc.,	$ 700,000.00	
60" and 48" Mains between Ravenswood and Astoria	844,422.71	
Astoria Tunnels, Pipes, etc.,	5,178,614.58	
Total,	$6,723,037.29	

Carrying charge at 12% = $806,764.47

Property of Consolidated Gas Company:

48" Mains in Manhattan and Bronx, connecting the two tunnels (not including the Harlem River Main)	$ 885,956.22	43539

Carrying charge at 12% = $106,314.75

Property of Standard Gas Light Company:

Value of 48" Harlem River Main,	197,911.54	

Carrying charge at 12% = $23,749.38

43540

RECAPITULATING THE JOINTLY USED PROPERTIES WE HAVE:

Value of New Amsterdam Gas Company and East River Gas Company of Long Island City property.	$6,723,037.29
Value of property of Consolidated Gas Company.	885,956.22
Value of property of Standard Gas Light Company.	197,911.54
Total.	$7,806,905.05

43541

RESULTING IN CARRYING CHARGES, AS FOLLOWS ON PROPERTY OF

New Amsterdam Gas Company and East River Gas Company of Long Island City property at 12%	$ 806,764.47
Consolidated Gas Company property at 12%	106,314.75
Standard Gas Light Company property at 12%	23,749.38
	$ 936,828.60

43542

(p. 7)

RATIO OF EACH COMPANY'S DEMAND TO THE TOTAL DEMAND UPON THE PLANTS LOCATED ON LONG ISLAND, WHICH SHOULD BE THE BASIS OF THE DIVISION OF THE CARRYING CHARGES OF $936,828.60 ON PROPERTY VALUED AT $7,806,905.05.

Plant capacities on Long Island,	86,000 M. cu. ft.	
(a) Used by The Astoria Light, Heat & Power Company,	49,406 M. c. f. or	57.45%
Used by New Amsterdam Gas Company,	20,757 M. " "	24.14%
Used by Central Union Gas Company,	15,837 M. " "	18.41%
	86,000 M. " "	100.00%

(a) Note: 57.45% of the carrying charge on the Consolidated Gas Company mains valued at $885,956.22 (page 6) should be carried by the Consolidated Gas Company.

The Astoria Light, Heat & Power Company:

Value of jointly used property,	$7,806,905.05	
Deducting value of property of Consolidated Gas Company,	885,956.22	
Astoria Co. will pay on 57.45% of	$6,920,948.83	$3,976,085.10 at 12% = $477,130.21

New Amsterdam Gas Company:

Value of jointly used property,	$7,806,905.05	
Value of New Amsterdam and East River Co. property located in L. I.,	6,723,037.29	
New Amsterdam Company will pay 24.14% of,	$1,083,867.76	= $ 261,645.68 at 12% = $ 31,397.48

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Central Union Gas Company:

Central Union Co. will pay 18.41% of $7,806,905.05	$1,437,251.22 at 12%		$172,470.15
That Portion of the Carrying Charges borne by the Owning Companies:			
Consolidated Gas Company, 57.45% of $ 885,956.22	$ 508,981.85 at 12%		$ 61,077.82
New Amsterdam Gas Company, 24.14% of $6,723,037.29	$1,622,941.20 at 12%		$194,752.94
Total Carrying Charge, $936,828.69			

47 THE FOLLOWING TABLES COMBINE THE CARRYING CHARGES AS READJUSTED: THE ASTORIA LIGHT, HEAT & POWER COMPANY, DR.

To the New Amsterdam Gas Company:

Tunnels and Piping of East River Gas Company of Long Island City. $6,723,037.29—57.45% being $3,862,384.92 at 12%		$463,486.19
To the Standard Gas Light Company:		
Harlem River Main $ 197,911.54—57.45% being $ 113,700.18 at 12%		$ 13,644.02
	$3,976,085.10	$477,130.21

48

CONSOLIDATED GAS COMPANY OF NEW YORK, DR.

To the New York Mutual Gas Light Company:

For use of 10,868 M. C. F. daily capacity at $205.725 per M.—$2,198,377.35 at 10%	$219,837.74

CENTRAL UNION GAS COMPANY, DR.

(p. 9)

To the Consolidated Gas Company:			
Holder, land and accessories, Fordham Road—Bronx—as per 1916 Adjustment,	$631,500.00		$60,970.00
Transfer Mains in Bronx, Central Union Works to Kingsbridge Holder as per 1916 Adjustment,	409,878.15 at 12% =		49,185.38
Distributing Mains in Bronx, from Kingsbridge Holder, as per 1916 Adjustment,	295,625.00 at 12% =		35,475.00
Transfer Mains from Locust Avenue and 134th Street to Central Union Works, as per 1916 Adjustment,	17,609.25 at 12% =		2,113.11
48" Main of joint facilities, value, $885,956.22—18.41% being	163,104.54 at 12% =		19,572.54
	$1,517,716.94		$167,316.03
To the New Amsterdam Gas Company:			
For use of 15,243 M c. f. daily plant capacity at $163.50 per M	$2,492,230.50 at 10% =		249,223.05
For use of Tunnels, Piping, etc., of East River Gas Company of L. I. C., Value $6,723,037.29—18.41% being	1,237,711.17 at 12% =		148,525.34
	$3,729,941.67		$397,748.39
To the Standard Gas Light Company:			
For use of Harlem River Main. Value, $197,911.54 — 18.41% being,	36,435.51 at 12% =		4,372.26

43552

To the N. Y. Mutual Gas Light Company:

For use of 594 M cu. ft. daily capacity at $205.725 per M.	$122,200.65	at 10% =	$12,220.06
Central Union Gas Company, Dr., to all companies.	$5,406,294.77		$581,656.74

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THE STANDARD GAS LIGHT COMPANY, DR.

43553

To the Mutual Gas Light Company:

For use of 2,439 M c. f. daily plant capacity at $205.725 per M.	$501,763.26	at 10% =	$50,176.33
Total Standard Gas Light Company, Dr., to all companies.			$50,176.33

NEW AMSTERDAM GAS COMPANY, DR.

To the Consolidated Gas Company:

43554 48" Connecting Mains in Manhattan and Bronx. Value, $885,956.22 — 24.14% being.	$213,869.83	at 12% =	$25,664.38
To the Standard Gas Light Company:			
Use of Harlem River Main. Value, $197,911.54 — 24.14% being.	47,775.85	at 12% =	5,733.10
Total New Amsterdam Gas Co., to all companies.	$261,645.68		$31,397.48

RECAPITULATION OF DEBITS AND CREDITS

The Astoria Light, Heat & Power Company.

	Debit	Credit
To the New Amsterdam Gas Company	$463,486.19	$
To the Standard Gas Light Company	13,644.02	
Consolidated Gas Company of New York.		
To the N. Y. Mutual Gas Light Company	$219,837.74	
By the Central Union Gas Company,		167,316.03
By the New Amsterdam Gas Company,		25,664.38
Astoria and Consolidated Companies —Net Debit,		503,987.54
	$696,967.95	$696,967.95

(p. 11)

RECAPITULATION OF DEBITS AND CREDITS.

New Amsterdam Gas Company:

	Debit	Credit
To the Consolidated Gas Company of New York,	25,664.38	$
To the Standard Gas Light Company,	5,733.10	
By the Astoria Light, Heat & Power Company,		643,486.19
By the Central Union Gas Company,		397.74839
Net Credit,	829,837.10	
	$861,234.58	$861,234.58

Standard Gas Light Company:

43558

To the New York Mutual Gas Light Company,	$50,176.33	$
By the Astoria Light, Heat & Power Company,		13,644.02
By the New Amsterdam Gas Company,		5,733.10
By the Central Union Gas Company,		4,372.26
Net Debit,		26,426.95
	$50,176.33	$ 50,176.33

The New York Mutual Gas Light Company:

By the Consolidated Gas Company of New York,		$219,837.74
By the Standard Gas Light Company,		50,176.33
By the Central Union Gas Company,		12,220.06
Net Credit,	$282,234.13	
	$282,234.13	$282,234.13

Central Union Gas Company:

To the Consolidated Gas Company of New York,	$167,316.03	$
To the New Amsterdam Gas Company,	397,748.39	
To the Standard Gas Light Company,	4,372.26	
43560 To the New York Mutual Gas Light Company,	12,220.06	
Net Debit,		581,656.74
	$581,656.74	$581,656.74

43561

(p. 12)

ADJUSTMENT BETWEEN THE CENTRAL UNION GAS COMPANY AND THE STANDARD GAS LIGHT COMPANY FOR USE OF A CONNECTING MAIN OF THE CENTRAL UNION GAS COMPANY FOR SUPPLYING GAS TO THE MAINS OF THE STANDARD GAS LIGHT COMPANY IN THE BOROUGH OF THE BRONX.

Based upon the annual sales of the Standard Gas Light Company in the Borough of the Bronx, I estimate the Maximum hourly requirements to be 23,000 cu. ft. To deliver this amount of gas from the Central Union Works into the mains of the Standard Company at 138th Street and Lincoln Avenue would require a 12" main, 6,130 feet in length. 43562

This represents an investment, based upon the Eighty Cent Rate Case, of $20,872.65, being carried by the Central Union Gas Company for and in the interest of the Standard Gas Light Company and for which the Central Union Gas Company is entitled to a carrying charge computed at 12 per cent amounting to $2,504.72 per annum.

ADJUSTMENT BETWEEN THE CENTRAL UNION AND NORTHERN UNION GAS COMPANIES. 43563

The annual charge against the Central Union Gas Company for use of property of other companies is $581,656.74, of which the Northern Union Gas Company should share its proper percentage, to be determined by ascertaining the ratio of its sales to the combined sales of both companies.

In addition to this, the Northern Union Gas Company should pay to the Central Union Gas Company

its percentage (based upon the ratio of its sales to the combined sales of both companies) of the carrying charge on the value of the Central Union Plant on the basis of a water gas installation.

Capacity of plant, 11,800 × 205.85 = $2,429,030.00.

The carrying charge computed at the rate of 10 per cent per annum on the value of the plant amounts to $242,903.00.

(p.13)

43565 It is recommended that the Central Union Gas Company render bills monthly, to the Northern Union Gas Company, for its share of the carrying charges on the capital account charged to the Central Union Gas Company by other companies, together with its share of the carrying charges on the Central Union plant, and that these bills be rendered upon the current monthly ratio of the Northern Union Gas Company's sales to the total sales of the Central Union and Northern Union Gas Companies.

Respectfully submitted,

GEO. E. WOODS.

5-1-19

43566

Q. Mr. Woods, referring to the testimony of the witness Sangster, the testimony of the witnesses Little and Hine with respect to steps for the provision of additional manufacturing and reserve capacity, will you state what apparatus, structures and facilities directly connected with and necessary for the new thirty million cubic feet plant at Astoria had been hitherto erected and provided in connection with the previous water gas unit, and hence are not included within the new construction now in progress.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, speculative, argumentative and not proper rebuttal.

The Master: Overruled.

Mr. Chambers: Exception.

A. At the Astoria plant at the present time we have buildings erected which would be used in connection with both the present water gas plant and the one that is now in the course of construction, namely, a pump house, tar separating pits, boiler house, exhauster house and the meter house. We also have other buildings which are used in connection with 43568
both the coal and water gas in common, and would be used in connection with the plant that is now under construction, namely, shop and office building, mess halls, wash and locker houses and lavatory. And in addition to this we have gas oil tanks and connections to plant, tar works and pipe lines, coal handling apparatus, electric power house and distribution system of same, general storage sheds, fire protection system, condenser pumps, piping systems of salt water, sewer and drainage system, city water service, railroad system and oxide yards. Those are the things that we have now, which would be used in connection with the present construction. 43569

Q. That is, these have hitherto been provided for this new plant and will be used in connection with it?

A. That is right.

Q. And their construction is not included in this one-half million dollar figure for new construction?

A. That is so.

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: What is the New York Mutual, coal or water gas?

The Witness: Water gas.

The Master: How do you figure that $205 per thousand cubic feet for plant equipment rather than $160 odd?

The Witness: Value of land as compared with land in Long Island City.

The Master: Oh, different land values. Is that the only difference that you figure.

The Witness: Yes, sir.

43571 Q. Are you able to state the cost of these facilities for the new water gas plant previously erected and not included in the present construction?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception.

A. If we should have to provide these additional facilities, the additional expense would be between two and two and one-half million dollars.

The Master: This unit cost of $152.60 per thousand cubic feet of daily capacity to cover plant equipment includes the buildings and everything included with it?

43572 The Witness: Yes.

The Master: And then you figure $10.50 per thousand cubic feet for New Amsterdam, which is on Long Island, for land?

The Witness: Yes.

The Master: As against New York Mutual of $53 plus on Manhattan?

The Witness: My recollection is that $10.90 was the figure.

The Master: Yes.

The Witness: $10.90 at New Amsterdam.

The Master: How did you get that figure $10.90?

The Witness: As based on their land value.

Mr. Chambers: This is all over my objection.

The Master: Well, cost of land or value.

The Witness: Well, as of the cost, I think is the figure I used.

The Master: And the $53 plus for the Mutual, was that cost?

The Witness: That was based on the taxable value of their property.

The Master: And the assessed value?

The Witness: Yes.

The Master: Sure about that? 43574

The Witness: I am quite sure about that.

Q. During 1918 you said that the Government was using part of the B plant. Was that in any way in connection with toluol, or was it something different?

Mr. Chambers: I object to that as being incompetent and irrelevant.

The Master: Overruled.

Mr. Chambers: Exception.

A. That was in the carbon production.

Q. That is, did the Government use your benches for carbon production which precluded their use for gas? 43575

Mr. Chambers: I object to that as incompetent and irrelevant.

The Master: Overruled.

Mr. Chambers: Exception.

A. Yes.

Q. And no gas was made in the benches used for carbon production?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception.

A. That is right.

43576

Mr Ransom: That is all on the direct.

Mr Teele is produced for cross-examination, his cross-examination having been previously fixed by the Master for 9.30 this morning.

Mr Chambers: Well, I think we might have a little more time, it seems to me, to check up his figures. I protest against going on now with him, because we have not had sufficient time to check them up, and moreover, Mr O'Brien is not here this morning, and that is a matter which concerns him.

The Master: My mind has been running some-
43577 what in that direction. The matter that Mr Teele was called on is to meet the Sangster matter. I think perhaps we might finish with Mr Carter and have his cross-examination before Mr Teele.

Mr Ransom: All right.

The Master: I will let you hold on a little while on Mr Teele. Put Mr Carter on. Mr Chambers can cross-examine him.

Mr Chambers: Well, the situation as to Mr Carter, we have not really had time yet to fully check up on these tables that he put in.

Mr Ransom: The defendants' representatives
43578 were at Mr Carter's office on Friday and went over matters as far as they desired.

Mr Clark: I haven't any copies of this Woods exhibit.

The Master: You will get it from the testimony as soon as it is written up.

Mr Clark: Well, will we have opportunity to examine it before we have to go into cross-examination?

The Master: Yes, you will have the opportunity tonight. Mr Briggs will get it out for you and deliver it this afternoon.

Mr Clark: I don't know that that is giving sufficient—

ROBERT A. CARTER, being recalled in rebuttal, testified further, as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Carter, when you were on the stand the other day, I failed to offer in connection with Schedules A, B, C, D, E and F, inclusive, Exhibits 471 to 476, the summary of the various schedules and exclusive of expenditures made but not charged to fixed capital for interest during construction, engineering and superintendence and other overheads, and exclusive of going value. You prepared such a summary? 43580

A. Yes.

Mr. Chambers: I object to it, he brought it out the other day, and as I understand it something was said about including something in it that should not be in.

Mr. Ransom: Not at all.

Mr. Chambers: 1919, the latter part of 1919.

Q. This is the schedule in the identical form that it was given to the defendants, along with Schedules A to F?

A. It is identical, yes, sir.

Q. No changes since that time? 43581

A. No changes since that time.

Q. This copy here is simply the typewritten copy, of which the form given them was a photostatic copy?

A. I think a photostatic copy was among the photostat copies of the Schedules A, B, C, D, E and F at that time, but not a typewritten copy, but you put typewritten copies in evidence with the exception of that one.

Mr. Ransom: I offer it as a summary of the other schedules.

43582

The Master: I will take it.

Mr. Chambers: I object to it as incompetent, immaterial and irrelevant. I understood the Master was not taking summaries of tabulations.

Mr. Ransom: He took the defendants' summaries.

The Master: I announced the other day I was going to take summaries, yes.

Mr. Chambers: You ruled out some of ours before.

The Master: I told you I would take them in. I told you when I ruled them out if I
43583 changed my mind and took them in, I would take yours.

Mr. Chambers: I make the same objection that I made to the introduction of these Schedules A, B, C, D, E and F when they were offered while Mr. Carter was on the stand the other day.

The Master: Yes, and all the objections interposed by all counsel to these schedules will be noted as objections to this summary.

Mr. Chambers: Exception.

The Master: The objections are overruled and an exception allowed.

43584 Paper marked Complainant's Exhibit No. 498.

Mr. Chambers: There is a portion, it seems to me, that ought to be stricken out, although I think it all ought to. He has got here some report made by George E. Woods, dated August 17, 1916.

The Master: Yes, I noticed that. There is testimony in the record about that report. I will let it stand.

Mr. Ransom: And Mr. O'Brien offered the resolution which sets forth that figure.

Mr. Chambers: I move to strike out that part

of it as not specially—along with the other grounds, on the ground that there is no basis for it.

The Master: Motion denied.

Mr. Chambers: Exception. The one we have is not a photostat copy of the original.

The Master: Is it a copy?

Mr. Chambers: There may be no mistakes in it, I don't know, but it is not a photostatic copy of the one offered.

The Master: Haven't you been checking the figures? 43586

Mr. Chambers: I do not see any yet that are different.

The Master: Well, there are only about twenty items there, suppose you check it up.

Mr. Ransom: This was originally typewritten in two sets. I find the copy that I handed you was the original of one impression rather than of the second impression. I have here the typewritten copy furnished from which that photostat was made.

The Master: Well, let me have the original and I will compare it with the photostat copy, if you can't do it. I will tell you very quickly 43587 whether it is a copy.

Mr. Chambers: Here it is.

The Master: The Master has compared the original exhibit with the photostat copy, and finds the photostat copy to be a correct copy. Go ahead.

Q. Mr. Carter, did you prepare a statement setting forth a summary of the cost of property claimed by the complainant company in this case to be used in its gas business, together with working capital and the value of franchises and rights, but exclusive of

43588 Robert A. Carter, Direct.

expenditures made but not charged to fixed capital for interest during construction, engineering and superintendence and other overhead and of going value, and also showing a comparison between the actual earnings as shown by the exhibits in this case upon such cost and earnings thereon at the rate of six per cent per annum for the years 1907 to 1916, both inclusive, and eight per cent per annum from January 1, 1917, to August 31, 1919?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper re-
43589 buttal, no foundation laid for such a statement.

The Master: I will take it.

Mr. Chambers: Exception.

A. I did prepare such a statement.

Q. And this is the summary statement of which copies previously were given to the defendants in the photostat form?

A. Yes.

Q. Upon this statement have you set forth for each of the years from 1906 to 1918 the balance shown upon the books of the company as the cost of different classes of property as detailed in Complainant's Exhibit 471 to Exhibit 476?

43590 Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper rebuttal.

The Master: Overruled.

Mr. Chambers: As hearsay, secondary evidence, self-serving declaration. I take an exception.

A. I have.

Q. And for the same years have you shown in column No. 6 of this summary, the working capital to which you have already testified as being reasonably required in the gas business of the Consolidated Company?

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Not proper rebuttal. Exception.

A. I have.

Q. And in the columns 9 and 10 have you shown the deductions to be made of the portions of the property used by others upon which the complainant for the purpose of this case did not claim a return from the gas rate, which deductions are also set forth in detail in Complainant's Exhibit 475 and 43592
Complainant's Exhibit 476?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, hearsay and secondary evidence, no foundation laid for it and a self-serving declaration, not proper rebuttal.

The Master: Overruled.

Mr. Chambers: Exception.

A. I have.

Q. And in column 11 you have shown the net book cost of property after deducting the portion used by others as shown by these Schedules 471 to 476 both inclusive, and in Exhibit 496?

Mr. Chambers: Same objection as last. 43593

The Master: Same ruling.

Mr. Chambers: Exception.

A. That is correct.

Q. How did you compute average cost of the property as of June 30 in each year, as shown in column 12 on this summary?

Mr. Chambers: Same objection as last stated.

The Master: Overruled.

Mr. Chambers: Exception.

A. That is the average of the net cost at the beginning and end of each year as shown in column 11.

43594 Robert A. Carter, Direct.

Q. And in column 13 have you set forth in this summary the income of the company from 1907 to August 31, 1919, each year as shown by the exhibits put in evidence through Mr. Teele?

Mr. Chambers: Same objection as heretofore stated in full.

The Master: Same ruling.

Mr. Chambers: Exception.

A. I have.

Q. And in column 14 have you shown what would have been the income at the rate of six per cent for
43595 the period from 1906 to 1919, and at the rate of eight per cent for 1917 to 1918 inclusive, and the first eight months in 1919?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, hearsay, secondary evidence, not proper rebuttal, no foundation laid for it, a self-serving declaration, speculative and problematical.

The Master: Same ruling.

Mr. Chambers: Exception.

A. I have.

Q. And in column 15 of this summary have you set forth your computation of the deficiency of such
43596. actual income as shown by column 13 below the return as so computed?

Mr. Chambers: I object to that for all the reasons last stated, and on the further ground that that is a question for the Court to pass upon.

The Master: Overruled.

Mr. Chambers: Exception.

A. I have.

Mr. Ransom: I offer the summary statement in evidence as a summary.

Mr. Chambers: I object to it on the ground it

is incompetent, irrelevant, immaterial, hearsay, secondary evidence and not properly proven, the witness has not shown that he is competent to make it, it is a self-serving declaration and not proper rebuttal, and all the grounds urged at the time last summer when the books were offered in evidence.

Mr. Ransom: Overruled.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 497.

Q. Mr. Carter, have you in a similar way prepared a statement, summary statement setting forth a 43598
comparison between the earnings as shown by the exhibits of the witness Teele and earnings computed at the rate of six per cent for the years 1907 to 1916 both inclusive, and at the rate of eight per cent for the years 1917 and 1918, and the first eight months of 1919, all inclusive, on the property of the Consolidated Gas Company claimed to be used and useful in its gas business, based first upon the appraisal and the testimony of Messrs. Mayer, Simpson and Preiss in evidence, and the schedules of additions and retirements put in evidence through the testimony of the witness Teele; the items of working capital previously testified to by you; the franchise 43599
value of $7,781,000, and secondly the cost to the Astoria Company of such property as shown by its Exhibits 471 to 476 and 496.

Mr. Chambers: I object to that as incompetent and irrelevant and immaterial, not proper rebuttal, no proper foundation laid for it, and it is founded upon considerable testimony which has been offered over our objection and exception, it is incompetent, and I refer to the testimony of the dead witnesses, because that testimony was improperly read into the case, the ac-

tion on trial not being a retrial of the former suit, nor a continuation of that trial sufficient to allow the testimony to be read, and was founded upon hearsay and secondary testimony, and deprives the defendants of the right to cross-examine the witnesses, and it is about as competent as the complainant's brief would be if they were offering their brief at this time.

The Master: Overruled.

Mr. Chambers: Exception.

A. I have.

43601 Q. Now, to arrive at the average net investment as of June 30th in each year set forth in column 1, did you take the amount included in this statement as the sums at which Messrs. Mayer, Simpson and Preiss appraised the property according to the testimony received in evidence in this case, embodying testimony given by them upon a prior trial?

Mr. Chambers: I will make the same objection as last stated.

The Master: Overruled.

Mr. Chambers: Exception.

A. I did.

Q. And to those appraisal figures have you added

43602 the net amount of additions and retirements since January 1, 1906, as shown in the schedules placed in evidence through Mr. Teele?

Mr. Chambers: I object upon all the grounds stated in full heretofore, and in addition, to the fact that it is an unsound and inconsistent basis.

The Master: Overruled.

Mr. Chambers: Exception.

A. I have.

Q. And in the year 1918 and 1919, did you substitute for the valuation of land made by Mr. Preiss the assessed values of land as testified to in this case?

Mr. Chambers: I make the same objection and add still further that it is now very apparent that they are proceeding on unsound bases.

Mr. Clark: Fanciful.

Mr. Chambers: Inconsistent bases.

The Master: Overruled.

Mr. Chambers: Exception. They have at least three different methods of handling the subject.

A. I did.

Q. Now, did you compute the average investment as of June 30th in column 1 in the same manner that 43604
you computed the average investment on the previous summaries?

Mr. Chambers: Same objection.

A. I did.

Q. And in column 2 headed "Actual Income," did you show the net income for each of the years as set forth in Complainant's Exhibit 367 for the period from 1907 to 1918, inclusive, and in Complainant's Exhibits 355 and 365 for the eight months of the year 1919?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception. 43605

A. I did.

Q. How did you compute the average investment as of June 30th in column 5, did you compute that in the same way as you computed column 1?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception.

A. In the same manner.

Mr. Ransom: I offer this statement in evidence.

43606 Robert A. Carter, Direct.

Mr. Clark: I object to this as incompetent, irrelevant, immaterial, secondary evidence, it is based upon facts which are not properly admitted in evidence, not properly proved, put up upon a fanciful theory, inconsistent and argumentative, self-serving declarations.

The Master: Overruled.

Mr. Chambers: I will add all the grounds that we urged at the time the books were offered in evidence last summer.

The Master: Overruled.

43607 Mr. Chambers: Exception.

Mr. Clark: Exception.

Mr. Chambers: Not proper rebuttal. Exception.

Marked Complainant's Exhibit No. 498.

Q. Mr. Carter, referring to the testimony of the witness Boylan in behalf of the defendants, has the company ever offered to sell any portion of the Sedgwick Avenue holder site, which Mr. Boylan testified that he thought might be improved for other than gas holder purposes?

Mr. Chambers: I object to that as incompetent, immaterial and irrelevant, not proper re-

43608 buttal.

The Master: Overruled.

Mr. Chambers: Exception.

A. Several real estate agents with which the company does business have understood that the company would be glad to dispose of that property, and would consider any reasonable offer for it.

Mr. Clark: I move to strike the answer out as not responsive.

The Master: Motion granted.

Q. Well, did they offer to sell—did you ever tell anybody that you would be glad to sell it, any real estate agent?

A. Yes, we have told all of those agents, that is, Douglas Robinson and Charles F. Brown, Golding when he was alive, and Joseph P. Day.

The Master: What did you offer for sale up there?

The Witness: The property not required for the—

The Master: Well, what?

The Witness: North of the holder.

The Master: What?

The Witness: North of the holder.

The Master: How much north of the holder? 43610

The Witness: Practically as we have indicated the amount of property required for the holder purposes.

The Master: And you have offered to sell some of that property up there, is that right?

The Witness: Yes, personally, with respect to Brown and with respect to Day, I have stated that the company would be glad to sell that property through them.

Mr. Clark: I object to that.

The Master: To them?

The Witness: Through them.

The Master: You have stated that to them? 43611

The Witness: To them, yes, sir.

The Master: That is as definite as your statement went, that you wanted to sell the property that you did not need north of the holder?

The Witness: Certainly.

Q. Well, has the company ever received from anyone any offer for the portions of the land not occupied by the holder, comprising the easterly half of Lot 1, Block 3236?

Mr. Chambers: Same objection.

The Master: Overruled.

43612 Robert A. Carter, Direct.

Mr. Chambers: Exception.

A. Yes.

Q. The company has received an offer?

A. Oh, no; it never received an offer. I did not quite understand the question.

Q. Referring to Dr. Weber's figures and his computations or expressions of opinion in Exhibit AA-465 and his testimony in connection therewith in particular reference to the general office building, is it or is it not true that the cost to the Consolidated Gas Company of the space which it occupied in the gen-
43613 eral office building is diminished by the rental which it collects from tenants and allied companies?

The Master: Let me hear that.

(The question was read by the stenographer.)

Mr. Clark: I object to that as including a conclusion of fact.

Mr. Chambers: I object as not proper rebuttal.

The Master: I sustain the objection as calling for a conclusion.

Q. Upon what basis, Mr. Carter, referring to Dr. Weber's exhibit and testimony, is the rental to the tenants, including the allied companies, adjusted?

43614 Mr. Clark: I object to that.

The Master: I will sustain that objection. I would not allow the other side over your objection to prove what they have charged the other tenants. The record shows what they collect.

Mr. Ransom: Why on the contrary, your Honor, Dr. Weber made the most elaborate computations which you took over my objection, which show exactly that thing.

The Master: They showed what?

Mr. Clark: It showed the gross rentals, that is all.

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Mr. Ransom: He endeavored to show that the gross rental should be deducted from the operating expenses of the building.

Mr. Clark: I object to that statement.

The Master: That is entirely a different question.

Mr. Clark: The operating expenses from the gross revenue, you mean?

The Master: I am very much puzzled about that feature of this case. I understand the situation perfectly.

Mr. Ransom: I am not sure that your Honor does.

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The Master: Well, maybe I am sure and you are not.

Mr. Ransom: Well, from the expression you made the other day, I am of that opinion.

The Master: As I understand the record, the Consolidated Gas Company in setting up its figures in this record, have shown the percentage of the building occupied by that company, charging themselves with that percentage of the operating expenses, and have credited themselves with an invested capital equal to that percentage of the entire cost. Am I right about that?

Mr. Ransom: That is true, so far.

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The Master: Dr. Weber on the other hand says that the proper procedure is to credit the company with the entire value of the office building and charge that account with all of the operating expenses and credit that account with all of the revenue, is that so?

Mr. Ransom: Yes.

The Master: Now, that as I understand it, that method which Dr. Weber undertakes, would show a profit in operation, which would further reduce the cost of the space used by the Consolidated Gas Company.

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Mr. Ransom: That is the precise point.

The Master: That is a question for me to determine, and I will determine it. I am now going to ask—

Mr. Ransom (interrupting): It is a question of fact.

The Master: No it is not. I am going to ask Mr. Chambers the very pertinent question as to what his position would be, what position he would take if the balance of the building showed a loss instead of a gain.

Mr. Chambers: I cannot answer that now, be-
43619 cause it does not, as I understand it, exist.

The Master: Yes. Well, it is all very easy to say it shows a profit, therefore the consumer ought to have it, but unless you can show me some rule which is applicable here whether there is a loss or a profit, the contention is wrong somewhere, that is the way my mind is running. Now, I did not want to bring up this discussion now, but I think I am right in my statement that I understand the situation, am I?

Mr. Ransom: I think you do.

The Master: All right.

Mr. Ransom: But your Honor said the other
43620 day, as I recall your expression, you said, "In other words, the cost to the Consolidated Company of the space occupied by it is reduced by the profits, and therefore assuming that there was a profit."

The Master: Well, I may have used words—

Mr. Ransom: On the other portion of the building.

The Master: I may have used words that did not correctly present what was in my mind, but I have the facts of this situation clearly in mind

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Mr. Ransom: As a matter of fact, there is not a profit on the other part.

The Master: Well, I don't know whether the figures show that or not, but the figures are in. I don't want Mr. Carter to analyze those figures for me or give me a conclusion. I will analyze them. But this is the puzzling thing about it. It is awfully hard to differentiate, as this company attempts to do, between the part it uses and the part it don't. As I view the testimony, and think about it, I am very much puzzled as to whether the company can say we use 45% or 47% or 46% or 32%. If I were clear about that, I 43622
think I would be clear that the gas company's attitude was the correct one, but I hesitate to hold that that is the correct manner, because I can see where, building a building of this kind, it is pretty hard to say. Now, we will take the profit on this other end of it, and we will figure it the way we do; and yet every time I think about it, I say, What would the defendants' attitude be if there was a loss? Suppose by some process of reasoning or other, it was concluded that the Edison Company and the United Electric Company ought to put up a building of their own and get out of this building and the situation should 43623
change so that the five or six floors that are rented to the Edison were not rented, and there was a terrific loss on this building, how would the consumers feel about carrying this loss?

Mr. Clark: That is not the proposition; there isn't any loss.

Mr. Chambers: The Consolidated owns the Edison and won't let them get out.

The Master: Well, suppose they did, suppose as a matter of practical operation the officers of the Edison Company and the Consolidated Com-

pany agreed that the thing for them to do was to put up a building and get out of here.

Mr. Chambers: The Consolidated, if that contingency presented itself, should not carry such an enormous building as that.

The Master: There is only one theory on which a lawsuit of any kind, to my mind, can be determined, and that is some absolute fixed and flexible rule that will work either way, win or lose. Now, you can't get a result by saying there is a profit there, therefore we are entitled to it,
43625 unless you are prepared to say if there were a loss you would have to suffer it. That is all there is to it. Now, let us get something else. This objection is sustained.

Q. Mr. Carter, in the rent charges by the Consolidated Company to the tenants of the General Office Building, including the allied companies, is there included any element of profit?

Mr. Chambers: Just a minute, Mr. Carter. I object to that as incompetent.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Well, in the rent charged by the Consolidated
43626 Company to the tenants of the General Office Building, is there included the sum of approximately $125,000, representing interest on the investment in the portion of the building occupied by the tenants?

Mr. Clark: I object to it.

Mr. Chambers: I object to it as incompetent.

The Master: Sustained.

Mr. Ransom: Exception.

Q. What is, Mr. Carter, the policy of the Consolidated Company with respect to charges made to the allied companies for rent of their portions?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. The leases are in evidence.

The Master: Objection sustained. I do not think they are in evidence, but I am not concerned with the policy.

Mr. Chambers: The leases?

The Master: Are they in evidence?

Mr. Chambers: Yes.

The Master: I do not recall.

Mr. Chambers: I think they are all in evidence. 43628

Mr. Ransom: The Master correctly states the fact.

Mr. Chambers: They are not in evidence?

Mr. Ransom: They were examined by the defendants in Court. I do not believe they are in evidence.

Mr. Chambers: I will not agree to that; my recollection is they are in.

Q. There has been some little suggestion, on the part of Dr. Weber and others, that there was some sort of profiteering by the Consolidated Company, or overcharging, of the allied companies and tenants for rent in this building, which had the effect of reducing the 43629
cost of the space occupied by the tenants themselves. Now, these other tenants are other public utilities subject to regulation and—

Mr. Clark: I object to the statement of Mr. Ransom as to what Dr. Weber said. I do not remember any such statement by Dr. Weber.

Mr. Chambers: I object to his statement that they are other public utility companies.

The Master: Yes, I do not think we had better have these statements on the record.

Mr. Ransom: I will take Mr. Clark's statement on that.

Q. Mr. Carter, referring to the testimony of the witness Maltbie and other witnesses who have referred to the subject of working capital, in determining the requirements of the Consolidated Gas Company of working capital, should a deduction be made for the amount of accounts payable?

A. No.

Mr. Chambers: Just a minute. Were you through?

23031 Mr. Ransom: Yes.

Mr. Chambers: I cannot tell where you stop. I object to that as incompetent, irrelevant and immaterial; and Mr. Maltbie did not testify to any such thing. Also it is not proper rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. Ransom: Does the Attorney General now state that Accounts Payable should not be deducted?

Mr. Chambers: I was just making an objection, which I have stated.

The Master: And which has been overruled.

23032 Mr. Chambers: Exception.

Q. Why not?

A. The Accounts Payable represent the company's credit. To deprive the company of a return on property that was represented by its credit would be equivalent to confiscating its credit.

Q. If the company had no credit, and therefore no accounts payable, would it not require the same amount of working assets?

Mr. Chambers: I object to that as argumentative, as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Exception. It is not proper rebuttal.

By the Master:

Q. Would it require any more cash if it had no credit?

A. No, it would require the same amount, your Honor. Of course, deduction for accounts payable applies, I believe, according to the theory of the defendants, rather, to the materials and supplies account rather than to any other account.

Q. No, I am talking about this: If you did not have credit would you need any more cash? 43634

A. Not more cash. We would have to have some other obligation representing our materials and supplies. In other words, we would have to have notes out, or bonds, or some other obligation which would take the place of our credit represented by our accounts payable.

Q. Suppose you did not have any credit, and you had to pay for your merchandise as it came in, would you need any more cash?

A. Not any more cash. We would require the same amount of cash, we would require the same amount of accounts receivable, we would require the same amount of materials and supplies. The only difference would be that on the other side of our balance sheet as representing those assets, instead of accounts payable we would have to have some form of obligation, which we do not have, because we have credit, that is all. 43635

Q. You would have interest bearing obligations out, would you not?

A. Exactly, interest bearing obligations.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Overruled.

43o36

Mr. Chambers: Exception.

The Master: Mr. Teele, I think, said you would need additional cash if these accounts payable were deducted. I was rather impressed with that idea.

Mr. Ransom: But it could be cash raised by the issuance of interest bearing obligations, in order to pay for these materials in advance?

The Master: Yes, but if a man has no credit he has to pay cash, and he has to have more on hand.

Mr. Ransom: But the interest bearing obli-
43o37 gations would be out, and the quantity of materials and supplies would be the same.

The Master: Of course, the quantity of materials and supplies would be the same.

Mr. Ransom: It affects, really, the element of materials and supplies, and what there is on the other side of the balance sheet with respect to materials and supplies.

Mr. Chambers: I object to that as being unsound and argumentative. Exception.

The Master: I think this is one element in the case that is going to be a guess; that is all there is about it—more or less of a guess.

43o38 Mr. Chambers: Working capital?

The Master: Yes. I think the evidence in the case shows there is not any hard and fast rule that is applicable. Mr. Carter thinks he ought to have four and a half million; Mr. Maltbie does not think he needs any.

Mr. Chambers: No.

The Master: Well, practically none.

Mr. Chambers: Oh, no cash? Mr. Maltbie said a half million.

The Master: I mean everything together.

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Mr. Ransom: Well, it is a business man's guess.

Mr. Chambers: Mr. Maltbie is over a million.

The Master: Mr. Little, I think, said it should be 25 per cent.

Mr. Ransom: 20 or 25 cents per thousand.

Mr. Clark: Not as to this company. It was the Quincy Company.

The Master: No, not as to this company. When he thought it over he thought it did not apply to this company.

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Mr. Chambers: No, he said he never studied this company's requirements.

The Master: I think I understand the point.

Mr. Ransom: Even the witness Maltbie was allowing 20 or 25 cents per thousand.

Mr. Chambers: I object to that as not in accordance with the proof.

Mr. Ransom: In other cases.

Mr. Chambers: No, that is not correct.

The Master: I will try to get the best guess I can out of all the testimony; that is all I can say about it.

43641

Q. Mr. Carter, referring to the testimony of the witness Maltbie, should a deduction be made from working capital for the amount of the balance charged over 80 cents?

The Master: That reserve fund of $430,000?

Mr. Ransom: Collected during the pendency of the prior suit and not yet claimed by consumers.

Mr. Chambers: I am going to object to that as incompetent.

The Master: I will take it. I do not think it is really proper, but I will take it.

Mr. Ransom: Mr. Maltbie testified to it; you permitted him to testify to that.

The Master: I rather felt that Mr. Maltbie, when he testified to that, was usurping my functions; but I will take Mr. Carter's statement on the same theory.

Mr. Ransom: Dr. Bemis also in his statement deducted it.

A. It should not be deducted, for the reason that it is not included in my computation of working capital that the company requires to transact its gas business.

43643 Nor is there anything included in my computation of working capital that is applicable to that obligation.

Mr. Clark: I object to that; it is absolutely not responsive.

Mr. Chambers: He does not answer the question.

Mr. Clark: He says it should not be included because he did not include it in working capital.

The Witness: If I had included it I would add that much to working capital that I computed.

Mr. Chambers: I thought the question was whether it should be deducted in any event.

By the Master:

43644 Q. In other words, you have not figured any amount for meeting that liability?

A. In my working capital I have not figured any amount.

Q. For meeting that liability?

A. For meeting that liability; no, sir.

By Mr. Ransom:

Q. And so it does not appear in the amount of cash for which you have made provision?

Mr. Chambers: That is argumentative and incompetent. I object to it.

A. It does not.

The Master: It presents difficulties in my mind, as to this $430,000 that the company has.

Mr. Clark: That they do not pay any interest on.

Mr. Chambers: None—no interest on it. There it is—not only don't have to pay interest on it, but I suppose they are getting some on it.

Q. Mr. Carter, in your calculation of working capital did you include in the accounts receivable the amount of money that had been expended in the production and distribution of gas that had been furnished to consumers, but for which no bills had been 43646
rendered up to and including the last day of each month?

Mr. Chambers: I object to that as incompetent and not rebuttal.

A. No, I did not include anything representing that amount of cash expended during the month of December for gas supplied to consumers, for which no bills had been rendered, and which therefore was not represented in the item of accounts receivable.

Q. Your item of accounts receivable, in so far as it relates to gas supplied, related only to gas for which bills had been rendered?

A. Exactly. 43647

By the Master:

Q. But for the year previously, you will find in January the receivables for gas delivered in December, won't you? At the beginning of the year you have receivables lapping over into the year before?

A. As of the first of every month, your Honor, we have, of course, recorded all bills rendered to consumers for gas supplied to them, which remain unpaid; but billing of consumers and the indexing of consumers' meters is a daily process throughout the month. A consumer, for example, whose meter was indexed

43648 Robert A. Carter, Direct.

the first of December and would not be indexed again until the first of January has had a full month's consumption of gas for which no bill has been rendered?

Q. Yes, that part is true.

A. And which, therefore, does not appear in our accounts receivable.

Q. I understood that, but the question brought out the fact that you had a lot of expense in December which was not represented by receivables for December.

A. That was my statement.

43649 Q. Yes. But in January you had receivables which were not represented by expense incurred in January. Do you get my point, Mr. Carter? Take the month of December, 1919, you spent a lot of money for material, supplies and labor for gas which is being made in December, and which is not represented by bills receivable, exactly?

A. That is right.

Q. But in January you had receivables for gas which was furnished during December, the expenses of which are already figured in the December, or last year's, working capital?

A. Well, I do not think that is material.

43650 Q. That may be; but that is the fact, isn't it?

A. Yes, that is an incident; but that does not affect the element of working capital, and it does not disturb the fact that there is an investment of $700,000, an expenditure of $700,000—

Mr. Chambers: I object to the argument.

A. (Continued.)—for the labor and material.

Q. In December?

A. In December, for which no bills have been rendered.

Q. Yes, but as against that statement of fact I must consider the fact that in figuring receivables you have

receivables in January which do not represent an expenditure in January?

A. Then that is offset again in the same way, and it goes on month by month, and we have always got to have as of any period throughout the year—in July, for example, the accounts receivable are just as high as they were the first of January.

Mr. Chambers: I object to this as argumentative.

A. (Continued.) —and our materials and supplies are just as high, and in fact that condition does not change substantially throughout the year. So that 43652
what is true of the first of January is true of the first of February and every other month.

Q. I understand.

A. And there is always that $700,000 that is not shown.

Mr. Chambers: I object to the witness taking over the trial of the case. Exception.

By Mr. Ransom:

Q. Mr. Carter, on the average how many days of the month are covered by the bills rendered during the month?

Mr. Chambers: I think that has been sufficiently covered. 43653

A. The average period covered by bills rendered to consumers runs from about the 14th of the month to the 14th of the next month, from the 14th of November to the 14th of December.

The Master: You mean about half the month is included in the bills that go out?

The Witness: Yes, just a shade under half of a month.

The Master: I think that is in the record already.

Q. Approximately what amount of operating expenses for the month of December, 1918, was not included in the bills rendered to consumers forming a part of the accounts receivable at the end of the month?

Mr. Chambers: I object to that.

The Master: Hasn't he just answered that, about half?

Mr. Ransom: No.

A. Well, it would not be one-half of the recorded expenses, your Honor, which includes taxes and in-
43655 cludes renewals, and in the case of the charge of the Astoria Company and the Mutual Company interest on investments in their properties devoted to the supply of gas to the Consolidated Company's consumers. So that in reaching the actual expenditures I eliminated items of that sort, which would increase the $700,000, in round figures that I stated, to approximately a million dollars.

Mr. Chambers: I should like to get an objection in here.

Q. And this amount of $700,000 to $1,000,000, should that be taken into account in figuring the working capital which should be provided by the company?

43656 Mr. Chambers: Same objection.

By the Master:

Q. What did you say your cash requirements are per month for labor and the rest of it, for operating expenses, between a million and a half and two million?

A. Well, our operating expenses for 1918 and 1919 —of course they are higher for 1919 than 1918, but they run over nineteen or twenty million dollars. That, of course, includes taxes and interest on the Astoria investment and the Mutual investment.

Mr. Chambers: I object to this as not responsive.

A. (Continued.) Renewals and replacements, they all represent expenditures during the year, but for the purpose of determining actual cash tied up, that is, paid out for labor and materials entering into the gas actually consumed, for which no bills have been rendered, I did not include interest which was not paid during that month or taxes which were not paid during that month, or renewals or replacements.

Mr. Chambers: I move to strike out Mr. Carter's argument. 43658

The Master: No, I will let it stand. We have a lot of testimony here that I do not think is proper, but I will take the testimony.

Mr. Chambers: Exception.

Mr. Ransom: May he answer the question?

Q. Do you think that $700,000 to $1,000,000 ought to be included or excluded?

A. I would not urge it, your Honor, in addition to the amount I have named, $4,625,000, but if there is any doubt in the Master's mind as to the propriety of that, why, I think this amount should be considered.

By Mr. Ransom:

Q. That is, you think this $4,625,000 is right now? 43659

Mr. Chambers: I object to that.

A. I have computed that as an amount of working capital with which the company can continue transacting business.

Q. Did this amount of working capital of $4,625,000, to which you have testified, include anything for the construction expenditures, construction requirements or construction capital of other companies than the Consolidated Company?

Mr. Chambers: I object to that, upon the ground that it is not proper rebuttal. He is ask-

ing him some more questions about his own testimony.

Mr. Ransom: This is in connection with the testimony of the witness Maltbie, who endeavored to—

Mr. Chambers: Mr. Maltbie did not say anything about that.

The Master: I will allow it.

Mr. Ransom (continuing): Who endeavored to cut off two million dollars.

The Master: Does it include any construction
43661 for other companies?

A. It does not; no, sir.

Q. Would the sum of $4,625,000 be sufficient to provide working capital for any construction purpose other than the companies of the Consolidated?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: It is allowed.

Mr. Chambers: Mr. Maltbie did not say anything about his figures; he said his did not include construction for other companies.

The Master: It is allowed.

Mr. Chambers: Exception.

43662 A. It would be absolutely inadequate. It does not contain a penny for that purpose. The construction requirements of other companies run into very large figures, and particularly in the electric business.

Q. Mr. Maltbie included in his calculation of working capital an amount of $200,000 for construction capital, which he said was for the Consolidated and allied companies. Would any such sum be a nearly adequate provision for the construction requirements of the Consolidated and allied companies?

Mr. Chambers: I object to that as being incompetent, irrelevant and immaterial, and not in ac-

cordance with the testimony of Mr. Maltbie. His testimony is misstated.

The Master: Overruled.

Mr. Chambers: Exception.

A. It is absurdly inadequate. The average expenditures for the last six years, for example—I am just giving the approximate figures—were about eight million dollars a year. The budgets prepared for the years 1920 and 1921—

The Master: No, do not give us that.

Q. Can you give us an estimate that has been determined on as representing the construction requirements of the Consolidated and its affiliated companies for the next two years? 43664

Mr. Clark: I object to that.

Mr. Chambers: I object to that as not proper rebuttal.

The Master: Objection sustained.

Mr. Ransom: Working capital, I submit, is a provision for the future.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Mr. Carter, referring to the testimony of the witness Bemis and the witness Weber, and I think one or two other witnesses in behalf of the defendants, are you and have you been familiar with the payment made during 1918 by the East River Company to the Astoria Light, Heat & Power Company of $310,270? 43665

A. Yes.

Q. What was the purpose of this payment?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper rebuttal.

The Master: Overruled.

Mr. Chambers: Exception.

A. The payment of the East River Company to the Astoria Company of that amount represented interest on the amount advanced by the East River Company for the construction of the tunnel.

By the Master:

Q. Which tunnel?

A. The Astoria tunnel, the 60-inch main.

Q. How much did it cost to build that tunnel?

Mr. Chambers: That is over my objection as incompetent, and exception.

A. More than $5,000,000. I would not like to
43667 name the sum. I know what it is, but the exact figures I have not in my mind at the moment.

Mr. Chambers: I move to strike out that statement as incompetent, not helpful, not rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

By Mr. Ransom:

Q. In the charge made by the Astoria Light, Heat & Power Company to the Consolidated Gas Company for gas manufactured by the Astoria and transferred by it to the Consolidated, is there any charge included to which the interest on the loan from the Astoria Company to the East River Company is an off-
43668 set?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: I will sustain the objection. I understand that situation, I think; I think it is clear.

Mr. Ransom: Exception.

Q. Mr. Carter, referring to the testimony of the witness Bemis and the witness Weber, in behalf of the defendants, in relation to the division of cost of carrying the properties referred to as jointly used, and the criticisms made of the action of the Executive Com-

mittee of the Board of Trustees of the complainant company in relation thereto, have you produced a certified copy of the excerpt from the minutes of the meeting of the Executive Committee of the Board of Trustees on June 24, 1919, setting forth completely the action taken as to that matter?

A. I have.

Q. And is this such copy, certified by you (indicating)?

A. It is.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object to it as being incompe- 43670
tent, irrelevant and immaterial.

The Master: You have not seen it yet. Do you object to it anyhow?

Mr. Chambers: Well, I would like to see it.

The Master: I think it is a great mistake for counsel to object just to hear themselves object. Some matter has gone in here this morning over your objection that I think is extremely valuable to the defendants.

Mr. Chambers: This morning I relaxed a little bit on that rule, and what happened? He slipped in some four or five days' lack of coal at Astoria, which was clearly incompetent. I guess the sat- 43671
est way is to keep on objecting.

The Master: I do not see how I can take this. I do not see how it has any probative force.

Mr. Ransom: May they criticise an action on the record, and put in exhibits in relation to an action, and endeavor to argue in relation to the extortionate claim, that the action should be somewhat different, and set forth what they think ought to be the basis of the action, and then the complainant not be able even to show what the action was?

43672

Mr. Chambers: It is not rebuttal.

Mr. Ransom: He may put in a garbled version of the action.

Mr. Chambers: We attack the 12 per cent and you have not got any rebuttal on that yet, that I have heard.

Mr. Ransom: Give me time. Mr. O'Brien, I may say, put in the resolution regarding the previous Woods report, the 1910 report.

Mr. Chambers: May I make my objection in full?

The Master: I would like Judge Ransom to
43673 show me a little more clearly how this is proper.

Mr. Ransom: Dr. Bemis and the witness Weber both submitted exhibits and gave testimony with respect to that division of carrying charges, and undertook to criticise that action, to show that some different basis should have been arrived at; and they put in a very fragmentary statement of what the action of the Executive Committee of the Board of Trustees was, and what the basis was. I am offering this to show in the most competent way possible what the action was that they are talking about and making up exhibits about and criticising. I do not know
43674 any more competent way. Suppose I put a witness on the stand who was present at the meeting and he testified as to what they did.

The Master: Is it your contention that the testimony given does not show all the facts with relation to the basis of calculation?

Mr. Ransom: I do not believe that it does, and it does not show what the action was that they are undertaking to criticise. This is the action.

The Master: What do you understand the testimony to be?

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Mr. Ransom: Dr. Bemis worked out and put in a different basis, in which he substituted different percentages and made a different basis of allocation, reaching different figures.

The Master: Different from what?

Mr. Ransom: Different from those which were embodied in the actual action of the Executive Committee of the Board of Trustees. And, bearing on that, they laid a foundation for that, or undertook to, not by putting in the action of the Board of Trustees so that that could be before your Honor, but they simply put in bills which were, as bills always are, not comprehensive. 43676
The whole action of the trustees is not set forth in the bills, and in connection with the bills and the Bemis computations of what he thinks the Executive Committee should have done, or would have done if he had been the Board or something, we offered to show what the Board did do.

The Master: Spread your objections on the record, Mr. Chambers.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial, as a self-serving declaration, not in rebuttal of any testimony offered by the defendants, hearsay and secondary evidence, depriving the defendants of the right to 43677
cross-examination.

The Master: I will overrule the objection.

Mr. Chambers: Exception.

Mr. Clark: What does this prove?

Mr. Chambers: What is it in rebuttal of?

The Master: You may see when I come to decide it.

Mr. Chambers: Exception.

Mr. Clark: Exception to your Honor's ruling.

Marked Complainant's Exhibit No. 400.

Q. Mr. Carter, referring to the testimony and exhibits of the witness Weber, and exhibits prepared by and submitted through the testimony of the members of the accounting staff of the commission, I ask you this question: During the year 1918 how much did the Consolidated Gas Company charge to other companies for departmental expenses, services of employees, exclusive of the use of facilities in the General Office Building, expenses of employees' societies and labor performed and material furnished by such departments as the Department of Mains and Services,
43679 Chemical Laboratory, Transportation Department, the Appliance Department for appliances transferred?

The Master: Isn't that all in the record?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Isn't that all in the record?

Mr. Chambers: Embodying a whole lot of questions in one.

Mr. Ransom: It is not brought together to give the details of it, no.

The Master: I will sustain the objection.

Mr. Ransom: Exception.

Q. How much did the Consolidated Gas Company
43680 charge to other companies during the year 1918 for the use of facilities and the rental of a portion of the General Office Building?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

Q. How much did the Consolidated Gas Company charge to other companies and receive from them during the year 1918 for the expenses of the employes' societies?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

Q. How much did the Consolidated Gas Company charge to the other companies and receive from them in the year 1918 for labor performed and material furnished by the Department of Mains and Services, the Chemical Laboratory, Transportation Department, and the Appliance Department for appliances transferred?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

Q. Aggregating how much for the year 1918?

Mr. Chambers: Same objection. 43682

The Master: Same ruling.

Mr. Ransom: Exception.

Q. Will you please state the charges made by the Consolidated Gas Company to the other companies for the same purposes, for the first eight months of 1919?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

Q. Do these charges include overheads attributable to the services rendered to those allied companies?

Mr. Chambers: Same objection.

The Master: Same ruling. 43683

Mr. Ransom: Exception.

Q. Mr. Carter, referring to the testimony of the witness Weber and his Exhibit AA-465, I ask you this question: If the Consolidated Gas Company disposed of all its securities and received no income except from its gas operations, would the Consolidated Gas Company have been able in 1918 or 1919 to reduce its legal expenses, its General Office salaries, General Offices supplies and expenses and the other miscellaneous general expenses which Dr. Weber has attempted by his Exhibit AA-465 to reduce by one-third or to omit entirely?

43:14

Mr. Chambers: I object to that.

Mr. Clark: I object to it.

The Master: What is that you are talking—if they sold their securities?

Mr. Ransom: Sold their securities and received no income except from gas operations.

The Master: Do you want to include in that question "and had no interest in any other company or in the operations of any other company"?

Mr. Ransom: Yes, I will include that.

The Master: Because that is the real test. I will let him answer that question.

43:085 Mr. Clark: I object to that.

Mr. Chambers: I want to lodge an objection. I object to it as incompetent, irrelevant and immaterial, speculative, not in accordance with the facts and not proper rebuttal, hearsay.

Mr. Clark: It is entirely immaterial.

Mr. Chambers: And no foundation laid for it.

The Master: The foundation for it, I understand, is as rebutting the testimony of your witnesses and the defendants' witnesses. The question in substance is this: If the Consolidated Gas Company had no interest in anything except the manufacture and delivery of gas to its consumers, so that Mr. Cortelyou would not have anything 43:086 to do except to see to the operation of this gas business, and Mr. W. Cullen Morris would not have anything else, and Mr. Carter could not have anything else—whether they would require the same number of men, at the same salaries, at the same expense. Is that the idea?

Mr. Ransom: Yes.

Mr. Chambers: Do you mean have no lawsuits on their hands either.

The Master: And no lawsuit on their hands.

Mr. Ransom: What do you mean by "no lawsuit"?

The Master: Take out legal expenses for the time being, and limiting it to the help used, the general expenses and the rest of it, would you be able to cut out any expenses in your judgment?

Mr. Clark: I object to that on the ground it is entirely immaterial; it is a wrong hypothesis.

Mr. Chambers: The fact is they do have these others, and they do devote their time to them.

Mr. Ransom: Your Honor has introduced another factor by your reference to Mr. Morris. 43688
Undoubtedly there are, as I endeavored to show, in the net amount shown by our exhibits here—

The Witness: It would not be reduced, it would be increased.

Mr. Chambers: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Exception.

The Witness: These expenses would not be reduced, they would be increased.

By the Master:

Q. Mr. Cortelyou's expense would not be increased? 43689

A. I am not referring to individual salaries, your Honor, but General Office salaries, the bulk of the expenses, General Office expenses and other departmental expenses, that we are now able to share with other companies.

Q. Leaving aside for the time being any legal expense incurred by reason of this litigation or similar litigation, and having in mind that it is suggested that your legal expense has to do with the general financial operations, intercorporate and otherwise, would your legal expense in your judgment be any less, assuming the same basis that I did for the last question?

Mr. Chambers: Same objection and exception.

A. Assuming the same basis, your Honor, there is no doubt in my mind they would be more.

By Mr. Ransom:

Q. And as far as legal expenses in connection with this suit or otherwise, or in connection with similar suits or otherwise, does not each of the companies pay its own legal expenses?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

By the Master:

43691 Q. The fact is that I saw by some of the vouchers that you charge the other companies with part of this rate lawsuit expense?

A. If we have not, we intend to do so.

Q. Well, I saw some vouchers charging them.

Mr. Ransom: It has already been done.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

Q. In other words, your argument, and I will take it purely as an argument, is that if this company was playing a lone hand you would have to bear these expenses yourselves?

A. Yes, sir.

43692 Q. But they do not rely on each other in a rate lawsuit, as in other matters; they divide themselves up?

A. Yes.

Q. It might not make any difference one way or the other?

A. Certainly, under certain circumstances they would not.

Mr. Chambers: I move to strike all of that out.

The Master: Motion denied.

Mr. Chambers: Exception.

The Master: As to the constitutionality of a

statute, I do not see now, as I expressed myself before, that we should take into consideration the cost of testing the statute.

Mr. Ransom: That has been passed on by the Courts.

The Master: That may be, and if I am bound by a ruling I shall probably have to follow it, but if it is a decision I am not bound by I won't. That is the answer to that.

Mr. Ransom: It is a question of over what period it should be prorated. Sometimes it has been three or four years and sometimes it has 43694
been less, all in one year.

The Master: I will see the authority to which you have reference. If it is an authority that I have to follow, of course I will follow it; but if it is the authority of some master or referee, I won't.

Mr. Chambers: I move to strike out all of that examination of Mr. Carter. Exception.

By Mr. Ransom:

Q. Mr. Carter, referring to the manufacturing book, in May, 1919, the page is of that month, in the book kept at the 99th Street station, and also the record of manufacture kept at the General Office, are 43695
you familiar with the circumstances of the corrections appearing on these pages of this exhibit?

A. Yes, I have investigated the matter.

The Master: Were you familiar with it at the time?

The Witness: I was not at the time, your Honor.

The Master: I am not going to take the result of Mr. Carter's investigations, you know, Mr. Ransom. We might as well save time on that.

Mr. Ransom: I think as an accountant, and as the head of the Accounting Department, he is entitled to state and explain what he found.

Mr. Chambers: No.

The Master: No, I will not take it.

Mr. Clark: I thought he was the vice president.

Mr. Ransom: Exception. He was vice president at the time, too.

The Master: I will take the testimony of anybody who knew about it at the time—Mr. Brundage, Mr. Carter, Mr. Jones or Smith, but I am
43697 not going to take Mr. Carter's inquiries and what he found out.

Mr. Ransom: I may have to call another witness on that.

Q. Mr. Carter, has the Consolidated Gas Company any reserve other than that which represents a segregation of its surplus account?

Mr. Chambers: I object to that. That is a question for a gas engineer.

The Master: I do not think you would let me put in any, or permit the other side to show any.

Mr. Ransom: Oh, yes, over my very vehement objection you permitted Dr. Weber to put in an
43698 exhibit on which Mr. Clark has been very largely relying, claiming that there was some reserve that had been set up.

The Master: Let us see it.

Mr. Ransom: I do not think your Honor should have done it.

Mr. Clark: It certainly was competent.

The Master: If I should not have done it, I will strike it out.

Mr. Clark: I take exception. It entirely refers to the gas business.

Mr. Ransom: Here are pages of it in Exhibit AA-243.

Mr. Clark: It entirely refers to the gas business.

Mr. Ransom: They attached new labels, far different from what they found in the books.

Mr. Clark: I object to that statement.

Mr. Ransom: I call them all reserves, according to their own peculiar theory.

Mr. Clark: That is just the way it was set up.

Mr. Ransom: It is not the way it was set up, and Dr. Weber so admitted. 43700

The Master: You are talking about the title, are you not?

Mr. Ransom: I am talking about what they were. Here they call it the reserve.

Mr. Clark: It is contingency reserve, your Honor, then renewals and replacements.

Mr. Ransom: They call it here "Depreciation reserve." Then they have "Charged to reserves on account of fixed capital retirements."

Mr. Clark: Isn't that what you call them?

Mr. Ransom: You completely changed the labels.

Mr. Chambers: Because you changed them. Certainly we had to follow your gyrations. 43701

Mr. Ransom: You did not do that. The record shows it and the witness admitted it.

Mr. Clark: It is entirely referring to the gas business.

The Master: I think I can let you bring out, probably, the substance of what you want, but not in the question you have asked.

Q. Has the complainant company ever set up a reserve for theoretical depreciation or created any fund to provide for theoretical depreciation?

43702 Robert A. Carter, Direct

Mr. Clark: I object.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. That is not the way to prove it. And there is no foundation laid for it.

The Master: I do not think so.

Mr. Ransom: That is what this whole Weber exhibit was devised on, the theory that they had.

Mr. Chambers: Oh, no.

Mr. Clark: You charge your retirements to this fund that you set up, whatever you call it.

43703 Mr. Ransom: They set up a fund and claim that it is to provide for this theoretical depreciation.

Mr. Chambers: Evidently counsel does not understand our exhibit.

Mr. Clark: You do not understand it, Mr. Ransom. We set up what the figures show, that is all.

By the Master:

Q. Mr. Carter, have you seen this exhibit?

A. Yes, I have seen it, your Honor.

Q. Are there any figures in the book similar, or are these figures in the books anywhere—take, for in-

43704 stance, 1919, the nine million and some odd thousand dollars' balance at the end of the year, which Dr. Weber, or some one calls Renewals and Contingency (indicating).

A. I think that in respect to these figures, they probably correspond with the books. I have not checked them exactly with the books, but—

Q. What account is that in the books? Isn't it Renewals and Contingency?

A. It was for a while Renewals and Contingency. Then in order to meet the wishes of the Commission, who objected to the combination of the divisions in

one account, we separated it and continued thereafter to treat the renewals as a separate matter.

Q. Then for a period there was an account Renewals and Contingency?

A. There was.

Q. Then at another time there was a period that you had an account Contingency?

A. That is a fact.

Q. And Renewals and Replacements?

A. Exactly.

Q. Other than that, did you carry any reserve accounts? 43706

A. None. For a while we carried an account which we believed was prescribed or included in the Commissions classification of accounts, a kind of suspense repair account, the cost of repairs being estimated and the actual repairs being charged against the account.

Q. When was that?

A. Oh, that was ten years ago. That was wiped out, discontinued, and the profit credited to profit and loss account.

Q. Then I will allow the question: Did you carry any depreciation account?

A. We have never set up any reserve designed to take care of so-called accrued or theoretical depreciation. 43707

Mr. Clark: Did that exhibit call it "depreciation"?

Mr. Ransom: Just a moment, let me examine.

Mr. Chambers: I object. I think that answer ought to be stricken out.

Q. I see this Renewal and Contingency account ran down to 1915. What became of it then?

A. It was then—the balance in the account was closed into a contingency account, and we proceeded to provide, as we had done for a period of thirty odd

years, for renewals and replacements of our property. That was nothing novel at that time. We have been renewing and replacing property since 1884, and providing for it annually, and the amount contained in the Renewal and Contingency account, your Honor, for the purposes of renewal of property, is represented by the charges against that account. Nothing else was intended for the maintenance of the property.

Mr. Clark: I object to what was intended.

The Witness: Well, as I had control of the account, I know what was intended.

43709 Mr. Clark: I object to it as evidence.

By Mr. Ransom:

Q. What was charged against this account that was kept down to December 31, 1913, called "Depreciation"?

A. We had an account which we had kept for a great many years, a suspense account that was closed at the end of each year, into which was charged the actual withdrawals of property from service, plant and equipment from service, so as to have all in one account until the end of the year, when it was charged in old times against profit and loss account directly, subsequently and for a few years it was charged to this
43710 combined account, renewal and contingency account, then subsequently it was charged to a strictly renewal and replacement account, which is the method used today. It was in no sense a reserve, but the depreciation account was a debit account and a suspense account designed to carry during the year the withdrawals during the year and nothing else.

Mr. Chambers: I cannot get a chance to object. I object to his characterization of it. That is for the Court to determine.

The Master: Motion denied.

Mr. Chambers: Exception.

Q. As of December 31, 1913, was this suspense account discontinued and an account substituted entitled "Renewal and Contingency Suspense Account"?

A. That change was made.

Q. At that time?

A. The term "Depreciation" was becoming so misused and abused that we decided to drop it.

Mr. Chambers: I object to that. By whom? I object as incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. Chambers: Exception. 43712

Q. From 1906 to 1915 from what account were the expenditures for maintaining the property by renewals and replacements charged?

Mr. Chambers: I make the same objection and take exception.

A. Against Renewal and Contingency account. They were carried in this suspense account during the year and charged out at the end of the year by resolution of the Executive Committee.

Q. Since the renewal and contingency account was split up, as you have said, in an endeavor to conform to the wishes of the Commission, as you understood them—since that time to what account have the actual 43713
expenditures for maintaining the property by renewals and replacements been charged?

A. To the renewal and replacement account.

Q. On the company's books does the expense account include any such item as contingent expenses?

Mr. Chambers: I object to that.

The Master: I think the books will have to speak for themselves.

A. As the Master says, Mr. Frank's testimony covers that.

43714 Robert V. Carter, Direct.

Q. Prior to 1915 were the provisions for renewals and contingencies charged to profit and loss account?

Mr. Chambers: I object to that.

The Master: I will sustain that. I have excluded that.

Mr. Chambers: That was gone into over and over again.

Mr. Ransom: The difficulty with this matter is, of course, that while these things are all shown, are accurately shown by the books, they will not appear on the record in this case.

43715 The Master: Why?

Mr. Ransom: Unless the books are before the court of review.

The Master: Then you have to get them before the court of review. We cannot handle the record on appeal in an improper way.

Mr. Chambers: Suppose the books have been improperly admitted, as we claimed throughout. And of course I have tried to object to all the questions which relate to them throughout.

The Master: I would like to know how long this case would have taken if I had admitted those books.

43716 Mr. Chambers: Not as long as it has. We would then have had an opportunity to cross-examine the men who made them.

The Master: In my judgment, from what I have seen of this case, I do not think it could be tried within five years and a half.

Q. Has the Consolidated Company since 1884 made any withdrawals of properties which have been recorded on its books of account for any reason other than obsolescence and inadequacy?

Mr. Clark: I object to it.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

Mr. Ransom: That is merely the fact.

The Master: I do not think it is rebuttal.

Mr. Chambers: I include that in my objection, too. It is not rebuttal. The witness is not qualified. He is not familiar with the company's books.

Mr. Ransom: They testified to obsolescence and inadequacy as an element in their depreciation.

The Master: No. I was in hopes that you could finish with Mr. Carter's direct.

Mr. Ransom: I have about ten minutes more. 43718

Mr. Chambers: I suggest that we adjourn until tomorrow morning.

The Master: Then we will take a recess until two o'clock.

Recess.

Afternoon session.

ROBERT A. CARTER resumed the stand.

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

43719

Q. Mr. Carter, as bearing upon the testimony of the witness Little as to prospective increase in annual sales proportioned to increase of plant capacity and maximum day's output, can you state what the sales of the gas of the Consolidated Gas Company were in the year 1905?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal.

Mr. O'Brien: I object to it. The books are the best evidence.

The Master: The 1905 books are not in.

43720

Mr. Ransom: I am offering this as preliminary to certain other questions designed to show the unsoundness of the claim of the witness Little that there will come about in any such period of time as the witness Little assumed any increase in sales so large; and also in rebuttal of the assumption of the witness Little that increase in necessary plant capacity due to maximum day's output maintains any ratio of increase to annual sales.

Mr. Chambers: I object on the ground—

Mr. O'Brien: The point I make is that we

43721

have not the underlying data as to sales of any year, much less for the years prior to 1918 than in 1918. In fact, I might say to you now as to those, as to the reputed or alleged sales of 1918 and 1919, the defendants are not taking for granted those sales, the complainant does not prove it by simply asserting it. The question as to the reliability of the record, and all that, as to the sales of the defendants is still an uncovered proposition in the proof of this case.

The Master: You are asking him what the sales were in 1905?

Mr. Ransom: Yes.

43722

Mr. Chambers: I want to make the same objection we made when the books were offered last summer.

Mr. Ransom: 1905 was the so-called test year at the time of the prior suit.

Mr. O'Brien: The Marwick & Mitchell report was excluded because it was ancient history, that these matters in 1905, were not to be gone into.

The Master: That was not the only reason.

Mr. Chambers: It was excluded because it was immaterial, was the only reason given.

Mr. Ransom: I will withdraw that for the moment.

Q. Have you the 1906 sales?

A. Yes, I have.

Q. What was it?

Mr. Chambers: I object to that on the same grounds.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. 13,879,727,700 cubic feet.

Mr. O'Brien: I move to strike that out on the ground that the witness has not shown any knowledge of the readings of consumers' meters; he has not shown that he personally has collated the 43724
records, or gathered even the records at the various commercial offices; that he has not taken the readings of the works meters. On the further ground that all these matters are subjected to the adjustment in the transferred gas bureau, where unaccounted for gas is distributed as they see fit under their arbitrary rules of distribution to the various companies.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. Can you state the capacity of the plants of the Consolidated Gas Company, together with the plant of the Astoria Company, as rated by the company in 43725
1906?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, hearsay, secondary evidence, not proper rebuttal, and no foundation laid for it.

Mr. O'Brien: In addition to the grounds stated by the Honorable Attorney-General, I add the objection that it is an engineering proposition, plant capacities, rated capacities, with quotation marks, does not mean anything in this rate case; that the witness has not qualified and is not an

engineer able to tell us what the capacities of these plants are today, or what they have been in various years since 1905.

The Master: Objection sustained. The record shows it.

Mr. Ransom: Exception. Your Honor is under the impression that the 1936 capacity is shown?

The Master: Yes, isn't it?

Mr. Ransom: I don't know where.

The Master: Well, in 1906, they had 14th
43727 and 42nd Street, they had 21st and 99th Street, didn't they?

Mr. Ransom: Yes.

The Master: And wasn't Astoria finished?

Mr. Ransom: But the present capacity of the Astoria plant by reason of work that was since done—

The Master: Was increased 10,000,000 feet?

Mr. Ransom: Yes, and then the water gas plant. Then there was 44th Street at that time. I think the witness is qualified to state, any executive officer of the company is entitled to state the rated capacity as reported by the company.

43728 The Master: The report will speak for itself.

Mr. O'Brien: Does that mean the claimed capacity?

The Master: What plants were you operating in 1906?

The Witness: 14th Street, 42nd Street, 21st Street, 44th Street, 99th Street and Astoria.

The Master: Has there been any change in the capacity of 14th Street since then?

The Witness: No, not 14th Street or 42nd Street.

The Master: The 44th Street plant has been abandoned?

The Witness: Yes.

The Master: What was your claimed capacity in 1906 at 44th Street?

The Witness: 8,500,000 cubic feet.

The Master: 21st Street has remained the same?

The Witness: 1,000,000 additional capacity.

The Master: 99th Street has remained the same?

The Witness: 99th Street remains the same. 43730

The Master: How about Astoria?

The Witness: Astoria has increased 30,000,000, that is, the 20,000,000 unit—

The Witness: Since 1906.

The Master: What 20,000,000 unit?

The Witness: The 20,000,000 water gas unit was installed at a rated capacity of 20,000,000 cubic feet, but which has been proved to have a capacity of 30,000,000. Of course, the Astoria coal gas is the same as it was.

The Master: Then I know all the figures.

Mr. Chambers: Exception.

Q. Is the so-called record of manufacture as kept at the general office the basis of any entries in the accounting and gas records of the company? 43731

Mr. Chambers: I object to that as immaterial, incompetent and irrelevant, and not proper rebuttal.

Q. (Continued.) The so-called manufacturing book or general office copy of the record of manufacture?

Mr. O'Brien: I make the same objection.

Mr. Clark: I object to that.

The Master: I will allow it.

43732 Robert A. Carter, Direct.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

A. It is not.

Q. Mr. Carter, referring to the testimony of the witness Little—

Mr. O'Brien: Your Honor, I move to strike out that question and answer.

The Master: Motion denied.

Mr. O'Brien: They are trying to refute their own testimony in that question.

The Master: Motion denied.

43733 Mr. O'Brien: Exception.

Mr. Chambers: I think that answer calls for a striking out of all their books.

Mr. O'Brien: If your Honor will recall, the testimony as I remember it was this, that the production statistics, gas production statistics are made up from reports; the reports are made up from the manufacturing books of each station. They are not made directly from data underlying the manufacturing books.

Mr. Ransom: The counsel has incorrectly stated the situation as to the station copy of the manufacturing record. My question did not

43734 relate to that.

Mr. O'Brien: What, have you some other alleged copy?

Q. Referring to the testimony of the witness Little as to the variance between the summer and winter demand for gas in the City of New York, and his judgment or opinion that something should be done to level the valley and reduce that variance, has the company been doing anything to try to increase its summer sales of gas?

Mr. O'Brien: Your Honor, I object to the question because of that long preamble which is not necessary in the question.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial, and not rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. The utilization and appliance departments are very actively engaged in the introduction of gas for summer loads strictly. That takes into account clothes washing and drying in establishments where that is done; water heating and incinerating appliances, where steam is used during the winter obtained from the 43736
use of coal required for heating purposes, that is, for house and structure heating.

Mr. O'Brien: This is looking forward next summer?

A. (Continued.) It is going on all the time, the development of that summer business. Also refrigeration, dehydration, fruit preserving, the washing and sterilizing of soda water glasses and appliances—at least the trades are being actively canvassed for the introduction of appliances designed to accomplish those results, that being a summer business to a great extent.

Q. Do you know of anything else that could be 43737
done that the company is not doing to increase the summer demands and use for gas without relatively increasing the winter?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and not proper rebuttal.

A. No, there is nothing left undone by those departments.

The Master: That you know of?

The Witness: That we know of.

Q. Has the company felt it in any way practicable to try to decrease the winter use of gas?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. It has not, and I know of no way that it could be done.

Q. Mr. Carter, have you prepared from the testimony in this case a summary of the charges paid by
43739 the Consolidated Gas Company for the use of properties of other companies used in the manufacture and distribution of gas sold to the consumers of the Consolidated Gas Company in effect as of October, 1919, and the cost thereof per thousand cubic feet of gas sold by the Consolidated Gas Company during the twelve months ended October 31, 1919?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper rebuttal.

The Master: Objection overruled. I will take a statement that he prepared it.

Mr. Chambers: Exception.

43740 A. I have prepared such a statement.

Q. Is this such summary?

A. That is the summary, yes, sir.

The Master: You say this is a summary based upon the testimony in the case?

The Witness: May I see that a moment? I believe that every item appearing here is in the evidence or may be deduced therefrom.

The Master: I don't think I had better take this.

Mr. Ransom: I should think your Honor would be glad to have that brought together

Every fact therein shown, if it be a fact, has been proved in this case. The computations of gas per thousand cubic feet sold by the Consolidated Gas Company, of course, is a matter of division of those sums by the total sales for the twelve months, which has also been proved.

The Witness: I think in respect of that item of New York Mutual Gas Company taxes—

The Master: I am taking summaries, so I will take this, too.

Mr. Ransom: This is not offered as evidence in itself, it is offered only as a summary for 43742 purposes of convenience.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial, no foundation laid for it, secondary and hearsay evidence; the titles are misleading and inaccurate, and it deprives us of the right of cross-examination of the witness in regard to the information back of it. The underlying data is not in evidence.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: Your Honor, in regard to this, I think the whole thing is argumentative, at least not only argumentative, but it uses terms that 43743 are conclusions of law.

The Master: Well, this is simply a statement of a claim.

Mr. Ransom: That is all.

The Master: I announced the other day that I would take these summaries for what they are worth. They don't prove anything.

Mr. Chambers: You ruled some of ours out.

The Master: I told you I would take them and I am repeating it.

Mr. Chambers: Are we to offer them again?

The Master: Yes, offer them in your sur-rebuttal.

Mr. Chambers: I did not understand that.

The Master: I have tried to make it clear to you that I had changed my mind, and I will take in your summaries.

Mr. Chambers: Here is a figure of seventeen million for Astoria. I don't know where that is in the testimony.

The Master: I don't either.

Mr. Ransom: That is the Sangster figure.

43745 The Witness: Of $17,650,000.

Q. That is, the figure given by Mr. Sangster includes in allowance for working capital certain items arising out of the carbon plant used by the United States Government which do not relate to the gas business.

Mr. Chambers: I object to that as incompetent.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Master: This paper that is offered will be marked in evidence over objections.

Paper received in evidence and marked Complainant's Exhibit 500.

43746 Mr. O'Brien: Your Honor, the further you look into this the more you will be inclined to keep it out. Take the headlines, "Annual Charges paid by the Consolidated Gas Company for the use of properties of other companies used in the manufacture and distribution of gas sold to the consumers of the Consolidated Gas Company in effect as of October 1, 1919, and the cost thereof per thousand cubic feet of gas sold by the Consolidated Gas Company during the twelve months ended October 31, 1919." Now, that is all a

legal conclusion, a happy term they have devised to apply to these tremendous amounts of money that are paid over in addition to the alleged actual cost of making gas at Astoria, and they use the words "cost of the gas sold by the Consolidated Gas Company during the twelve months." The whole thing is a legal conclusion. I think if your Honor is going to permit them to summarize something that is in the evidence it should be taken as it is in the evidence and not with this framework around it.

The Master: I will take it. 43748

Mr. Chambers: I want to add that I cannot see wherein it is rebuttal of anything.

Q. Mr. Carter, have you prepared from the testimony and exhibits in this case a statement summarizing the claims of the complainant company of the present cost per thousand cubic feet of gas sold as of October, 1919, of the gas sold by the Consolidated Gas Company?

Mr. Chambers: I object to that as incompetent.

The Master: I think there is a limit to these things.

Mr. Ransom: This is the last, and that is all. 43749

Mr. O'Brien: It reminds me, all these various documents—

Mr. Chambers: I think we ought to have time to examine into these statements.

The Master: It is not proof. I am not going to give you time.

Mr. O'Brien: We are not laying a cornerstone here, and hence it is not necessary to gather in all the spare papers they have around the Consolidated Gas Company's office, adjusted figures, and all that sort of thing, and put it in

43750

the box there for posterity a hundred years hence to read.

Mr. Ransom: This is offered in rebuttal of the exhibit of the witness Weber. The witness Weber made up a table of revised and reduced and abbreviated costs, summary of cost as he saw it and computed it. That is, he brought together all the different elements and made his deductions and assumptions as to three-cent oil instead of six-cent oil, and all that sort of thing. We are offering this as a summary statement of what has been proved in this case, bringing together
43751 all the various elements that enter into the cost to the Consolidated Gas Company of the gas sold by it. It is offered solely as a summary, not proof in itself of anything there set forth, but simply for the convenience of the Court and as something of a comparison with the exhibit of the witness Weber.

The Master: Doesn't Teele's exhibit show that?

Mr. Ransom: No.

The Master: In what respect?

Mr. Ransom: Because the exhibit of the witness Teele, one is of twelve months of 1918, and
43752 eight months of 1919, and the nominal year ended October 31, 1919, and it does not bring together, for example, the items of taxes paid directly by the Consolidated and the items of taxes paid indirectly with the deductions.

The Master: I don't think I will go as far as you ask me to. I will sustain the objection.

Mr. Ransom: May I have it marked for identification?

The Master: Yes.

Mr. Ransom: I don't see why our summaries

43753

should be excluded and the complainant's received?

Paper marked Complainant's Exhibit 501 for identification.

Mr. Ransom: I think that is all.

The Master: Cross-examine, Mr. Chambers.

Mr. Chambers: I am going to ask for a little more time to look into some of these papers.

The Master: Motion denied. Proceed with the cross-examination.

Mr. Chambers: Take this last one.

The Master: I would not allow any cross-examination on it anyhow. It is simply a claim. 43754
You will argue their claims later on.

Mr. Chambers: How about some of these other summaries?

The Master: Go on and cross-examine.

Mr. Clark: You allowed cross-examination on our claims.

Mr. Chambers: I protest that you have not given us what I think is sufficient time to check up all these photostatic copies from the books and records.

The Master: I have given you all the time I am going to.

Mr. Chambers: Exception.

43755

Mr. O'Brien: I understand there was an examination of Mr. Woods this morning into matters—

The Master: Yes, and I have directed that there be no cross-examination until you get a copy of the testimony.

Mr. O'Brien: I don't think that covers my rights. I told you last week of my peremptory appointment in the Supreme Court.

The Master: And I told you to make an application to Judge Greenbaum to adjourn, and

43756

you would not do it. Two counsel were here on the taking of the direct testimony of Mr. Woods and I have refrained from permitting cross-examination of any witness during your absence to protect you, and I am not going to permit cross-examination unless counsel are here, except in some unusual situation.

Mr. O'Brien: I except to your Honor's refusal to allow me an adjournment of the case this morning to permit me to keep this peremptory engagement before Judge Greenbaum, which had already been held over two weeks on application.

43757 The Master: He would have adjourned it this morning if you had asked him.

Mr. O'Brien: I did not put up to him your request. It was a peremptory adjournment. You told me to say to the Court that you were going to Cuba on Friday, and ask him to put the matter over. I knew what the answer would be.

The Master: You didn't know anything of the sort. Knowing Judge Greenbaum as I do, and knowing the situation, I was fairly safe in assuming that if you had explained the situation to Judge Greenbaum directly or through a representative, he would have been glad to put this

43758 over until Friday.

Mr. O'Brien: In that connection I will state that he is sitting in Trial Term. The motion was to be heard by him there. It was well after 10:30 before he finished hearing excuses from the jury—

The Master: I told you that would happen.

Mr. O'Brien: Then there was some twenty minutes taken up in making minutes in the record of the Court over the death this morning of Mr. Justice Dugro, so that the time given to the argument itself did not represent all the time that I was away.

The Master: I knew all that, I told you that last week, that if he were holding Trial Term he would have a new jury today and it would take time, and that if you would send somebody there to ask him to adjourn it until Thursday or Friday, so as not to interfere with this case, he would do it. The incident is closed.

Cross-examination by Mr. Chambers:

Q. Who made up this Exhibit 472, Mr. Carter?

A. It was made up under my direction by my staff.

Q. Who, on your staff? 43760

A. Well, several worked on it.

Q. For instance, who?

A. Mr. Brundage, Mr. Norton, Mr. Davidson, Mr. Alrich.

Q. Is that all?

A. I think that is all.

Q. Who worked on this particular Schedule B?

A. I thought you were referring to Schedule B?

Q. Those men worked on it?

A. Yes.

Q. Do you know how they made it up?

A. Yes, they made it up from the books.

Q. Who put the title on, "Book Value of Plants"? 43761
Is that your title on the first page?

A. Yes.

Q. What do you mean by book value? Do you mean book cost? Is value synonymous with cost?

A. The cover of the schedule states that it is a detailed statement of the cost of the company's manufacturing plants and holder stations to and including December 31, 1918.

Q. Yes, I am able to read that, but I am asking you now about the words "Book Value of Plants"?

A. The books record the cost to the company of the property.

Q. Well, by book value you mean book cost?

A. I mean book cost and actual cost.

Q. Both?

A. The same thing, synonymous in this case.

Q. So everything in here is what it actually cost the company?

A. Yes.

Q. Now, they started out, did they, with the opening entries in the journal, pages 1 to 21, that was offered here in evidence?

A. These are made up from the ledgers and not
43763 from the journal.

Q. Well, this opening entry here on page 1, November 11, 1884, of the different plants, is that taken from pages 1 to 21?

A. It is taken from the ledger into which pages 1 to 21 of the journal were posted.

Q. These were not taken from pages 1 to 21, but from the ledgers?

A. From the ledgers.

Q. Of the Consolidated Gas Company?

A. From the Consolidated Gas Company's ledgers.

Q. Now, take the very first figure, November 11, 1884, on the first page of this Schedule B, which is
43764 Exhibit 472, do you find on the books, East 14th Street station, $1,706,445 in that figure in the ledger in one account?

A. It might be in more than one account.

Mr. Ransom: I object to the statement. They are referring to the summary at the beginning of this schedule and not the 14th Street account, which gives the details.

Q. How many amounts would you say?

Mr. Ransom: I object to that. It is shown in detail on the pages of this various exhibit.

The Master: The question is allowed.

A. It is from the ledger. 14th Street would not show in what amount. It shows in one of the subsidiary books in which the stations were carried separately.

Q. What are the subsidiary books to which you refer?

A. General account books.

Q. That is, in order to find that figure you would have to run through those subsidiary books?

A. One in order to find that amount.

Q. Then this is not taken right from the ledger, that amount? 43766

A. No. The aggregate of all the stations shown on that page to which you are referring will be found in the general ledger.

Q. For instance, you obtained some of the figures which go to make up that first item, $1,776,445 from the Rowland appraisal?

A. I have stated that this is not taken from the Rowland appraisal. It is taken from the books in which the Rowland appraisal was posted.

Q. Well, look on the 6th page, at the very beginning, plant account 14th Street, 1884, November 11, Rowland appraisal, $1,776,445. What do you mean by that? 43767

A. I have no doubt that agrees with the Rowland appraisal, but this is not taken from the Rowland appraisal. That is all. I am not suggesting that there is any difference between this and the Rowland appraisal, but this is taken from the general books.

Q. These subsidiary books, how many of those are there that were used in making up that amount?

A. That amount will be found in the book called the general account book.

Q. In the same amount as that, in a lump sum?

A. Yes.

Q. Did you take it right off of that?

A. Yes.

Q. So they did not go into subsidiary books for that sum, they took it from that book?

A. General account book.

Q. What kind of a book is that general account book?

A. What do you mean, what kind of a book? It is a book in ledger form.

By the Master:

Q. Where did all the rest of the entries come from
43769 on this same page?

A. They come from the same books, the general account books.

Q. Not from the ledgers?

A. Only the aggregate. The aggregate is shown in the general ledger, and the stations are not spread out in detail in the general ledger, but the aggregate of all is shown in the general ledger. For instance the figures shown at pages 1 to 21 of the journal which is in evidence were posted in an aggregate directly to the general ledger, as the stations were posted in this general account book, which is a record distributing these accounts over the various sta-
43770 tions.

Q. I see here in 1918 there was a governor house connection, 84-inch, $82.14 added here. Would you have to go back to the general account book to find that or would that be in the ledger?

A. That would be found in the operating ledger for that year. The general account book is no longer kept, the operating ledger has taken its place.

Q. How far will all the items here appear in the operating ledger?

A. Back to about 1900.

Q. So that these items between 1884 and about 1900 will be found in the general account book, as distinguished from the general ledger?

A. Yes, sir.

Q. And since then they will all be found in the operating ledger?

A. Yes, sir.

By Mr. Chambers:

Q. Where did you get that $66.75 that appears on the very first statement, on page 1?

A. In the general account book?

Q. That small sum? 43772

A. Yes.

By the Master:

Q. Every detail item from 1884 down to about 1900 is in the general account, with the total carried into the general ledger?

A. That is correct.

Q. Do you know of your own knowledge whether the experts for any of the defendants have at any time used any one of these general account books or had them at all?

A. Oh, I think there is no doubt of it.

Q. Of your own knowledge?

A. I don't know of my own knowledge. 43773

Mr. Chambers: I object to his answer. He says he has no doubt of it.

Mr. Ransom: Will the defendants deny it?

Mr. Chambers: Yes, I will on behalf of the defendants I represent, deny it.

Mr. Ransom: I move to strike out the exhibits put in on behalf of the Attorney General purporting to show cost taken from the general account books of the company from 1884 to 1900?

The Master: I will take that into consideration when we come to summing up.

Mr. Chambers: We didn't show any figure coming from that book.

The Master: I will find out when we come to summing up where you got figures from, if you did not get them from these books.

Mr. Ransom: I shall also ask your Honor to take into consideration the question of the truthfulness of certain statements made by witnesses for the defendants which may come to some other tribunal.

Mr. Chambers: I move to strike out his an-
43775 swer saying, "There is no doubt of it."

The Master: Motion denied. It was followed by a further question indicating that he had no personal knowledge of it.

By Mr. Chambers:

Q. Take the West 42nd Street station, the opening entry of $1,456,527, is there included in that item a sum taken from the Rowland Appraisal, so-called, page 884 of Senate Document No. 47, this item, "Office proper, lease to May 1, 1891, at $4,000 per annum, 6 1/8 years, $25,333"?

A. May I see the record to which you are refer-
ring?

43776 Mr. Ransom: I object to the question on the ground that the Rowland Appraisal has nothing to do with it. The witness has stated he did not take this from the Rowland Appraisal but from the books.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. You are asking about the item of $25,333, which is included in the aggregate of $51,558.30 shown on page 885 and on page 886. There was $28,000 excluded from that item of $51,558.30. I think some-

thing probably was included in the amount that was finally adopted and that appears in the journal covering that lease.

Q. Was it included or wasn't it included?

Mr. Ransom: Was what?

Q. Was the item of $25,333 included?

A. As nearly as I can figure it out, I think possibly some of it was included.

Q. That is the best you can tell about it?

A. Yes.

Mr. Chambers: Your Honor, Mr. Mylott and Mr. Pyle, two of our young men, are working on 43778
the manufacturing books. Can they use them?

Mr. Ransom: They are now being used.

The Master: By whom?

Mr. Ransom: By the complainant.

The Master: For what purpose?

Mr. Ransom: In view of your Honor's ruling this morning I am having them examined by a prospective witness.

The Master: How long will he be?

Mr. Ransom: I don't know, only a few minutes, probably.

The Master: Wait a few minutes and I will get them for you. 43779

Q. Can you tell me when that sum was credited to the account, when it was taken out?

A. No, I don't know that it was credited.

Q. That is, you don't know whether it was taken out or not?

A. I said I don't know to what extent that lease was included that I am under the impression that it was included in some amount. It is not stated and does not appear.

Q. Then you can't tell me whether it was included in any of the credits or not?

A. Subsequently in that account?

Q. Yes.

The Master: Have you got to look through all the accounts?

The Witness: I can't trust to my memory of these records for thirty-five years, your Honor. I am not able to state when and by what amount it was withdrawn. I would have to examine the account very carefully to determine that, assuming that it was included.

Q. Well, you don't find on that page, plant account,
43781 which seems to be page 6 of this Exhibit 472, you do not find on the side of credits there any amount, do you?

Mr. Ransom: I object to the question. What has page 6 of the exhibit got to do with this?

Mr. Chambers: The credits are shown on the right-hand side of that page.

Mr. Ransom: What has page 6 got to do with it? That relates to 14th Street.

Mr. Chambers: You are correct. I got the wrong page.

Q. Take the page, plant account, 42nd Street, with the debits on the left and credits on the right, you
43782 do not find any such sum, do you, among the credits on that page, that sum of $25,333?

A. No, I have stated that it was not included.

Q. Do you find any amount?

A. No, I am not able to identify any item appearing in the schedule in detail as referring to that particular item. It would be rather an intangible thing anyway. It was a lease, as I understand it. It was assumed to have a value at that time, and if anything was included it was included as the value of the lease. As a matter of fact I think that lease fixed the rent

of that building at a very low rate. It was the corner of Broadway and 46th Street, and it was deemed at least perhaps that the lease had a substantial value because of the low rent that went with it.

Q. Now, take the 111th Street statement, 111th Street plant—have you that?

A. As of what date?

Q. You have that at the beginning there, 1884?

A. Yes.

Q. The opening entry there is from the Rowland Appraisal, is it not?

A. I think not. I have stated that none of this is 43784
made from the Rowland Appraisal. This is made from the books.

Q. It says there Rowland Appraisal $806,000, does it not?

The Master: Get your detail sheets, Mr. Carter.

A. It excludes the Inwood plant valued at $20,000, which is shown separately as the Inwood station on the third page of the schedule, $20,000, that item not being included in the investment of the company upon which it claims a return.

Q. Then you excluded all the property of the Inwood station? 43785

A. Yes.

Q. In 1884, did you?

A. Excluded it in 1884?

Q. Yes.

A. What do you mean by excluding it?

Q. When did you exclude the Inwood plant from the 111th Street plant?

A. I don't know what you mean by excluding it. It is shown separately on the books. It was not excluded, it was separately stated from the rest of the plant of the Harlem Company.

Q. At $20,000?

A. At $20,000.

Q. That covered all the Inwood plant, did it, all the property of the Inwood station?

A. All the plant of the Inwood station. It covered the holder, there was nothing else there.

Q. Just one gas holder there?

A. Just one gas holder there.

Q. That is all, at $20,000?

A. Yes.

Q. Nothing else?

43787 A. Subsequently a dwelling was put up on the plot, but it is not included in the land or in the plant shown in the exhibits put in today upon which the company has computed a return. I explained that to Mr. Hine when he was at the office the other day.

Q. Now, take the 14th Street plant in 1905, 1906, did you or did you not include a holder built for the New Amsterdam Company?

A. There are some items included there in that year for tank and holder, valve house connections, etc.

Q. Wasn't that for the New Amsterdam Company?

43788 A. Yes, but subsequently taken out.

Q. What year was it taken out?

The Master: When was it put up, Mr. Chambers?

Mr. Chambers: 1905.

A. It was taken out in the next year, 1906. That is the cost of clearing only. That was the only expense that we have been put to in connection with the holder itself. Therefore the New Amsterdam took on the construction of the holder itself, so that the only item to eliminate subsequent to 1905 was that

item of $5,992.35, which you will find credited in the next year, 1906.

Q. On January 1, 1906, that amount is in your balance of $2,406,288.61?

A. Yes.

Q. You say you took it out at the top of the next page there on the credit side?

A. Yes. The valve house and connections which I referred to when I look down this way, of course, remained the property of the Consolidated Company.

Q. Did you include the plant on Blocks 989 and 991 43790
in the 14th Street plant in your debits in 1907?

A. What schedule are you referring to now?

Q. I am on the 14th Street schedule, plant account, 14th Street?

A. What item have you in mind.

Q. The plant that was condemned by the City on Block 989 and 991. Were you carrying that on your debit side in 1907?

A. It is carried right down to the present time.

Q. Still carried?

A. Any plant for which we have not been made an award, for which we have not received an award, and which, therefore, has not been entered up to the 43791
credit of the plant account, remains as a debit in this account.

Q. Do you know that plant on Blocks 989 and 991?

A. Taken for the Willard Parker Hospital?

Q. Yes.

A. I know of it.

Q. It was taken in 1907?

A. I understand that.

Q. That is on your debit side?

A. It is on the debit side of this plant account. It is not included, however, in the summary of the

company's investment in 1918, or for any of the years from 1906 to 1918 since it was withdrawn.

Q. When was it withdrawn?

A. There is a schedule of withdrawals there in which that appears.

Mr. Ransom: Schedule E.

Q. That does not appear on the credit side here anywhere? A. No, it does not purport to. There is no reason why it should appear upon the credit side of the schedule taken from the books, in which no entry has been made because no award has been
43793 made.

Mr. Chambers: Schedule E, Exhibit 475, includes property on the land.

Mr. Ransom: No, it is 476 on the plant, 475 on the land.

Q. Now, I show you, Mr. Carter, Exhibit 476. You show on Schedule F, Exhibit 476, that 14th Street plant located on Block 989, Lot 1, and Block 991, Lot 26, you show an item there to be deducted of $91,360.49?

A. Yes, sir.

Q. Now, in this long table here, which is Complainant's Exhibit—

43794 Mr. Ransom: You are interrogating the witness as to a paper not in evidence, offered some months ago, but not received, and marked for identification.

Mr. Chambers: All right. I got the wrong one, maybe. Is this in evidence (exhibiting).

Mr. Ransom: Yes.

Mr. Chambers: What exhibit number is that?

Mr. Ransom: It was received today. I don't know at the moment.

Mr. Goetz: Exhibit 497.

Q. In this Exhibit 497, is this plant located on Block 989, Lot 1, and Block 991, Lot 25, to which I have just called your attention, being deducted in 1918, in these figures here being item 2 for 1906, and so on down to 1918?

A. It is not in there.

Q. In either period?

A. Yes. It is not in there from the date it was taken by the City, the property was condemned by the City.

Q. What date is it that it is not in?

A. I won't be certain about the date. I would 43796
have to have—

Mr. Ransom: The date has been put in evidence several times.

Q. You can't tell me when you stopped putting it in, what year?

A. No. I can only say that it is not in there from the time that the property was taken by the City.

Q. In that respect, then, this exhibit differs from the books, does it not?

A. Yes, it does, this exhibit differs from the books in respect of all property of a similar character.

Q. Why did you depart from the books there in that instance? 43797

A. Because the property was not used in the gas business.

Q. That is, now you say that that plant having been condemned, the minute it was condemned and not used, it should have been taken out of manufacturing plant and equipment?

A. No.

Q. You don't say it should?

A. No, not from manufacturing plant equipment account.

43798 Robert A. Carter, Cross.

Q. Yes.

A. On the books of the company?

Q. Yes.

A. No.

Q. Should not it ever have been taken out?

A. It should not be taken out until the award is made.

Q. State what you did. Is it put in this exhibit?

A. Not in the exhibit. We have eliminated from the date when the property was taken by the City.

Q. Well, which is right, this or your books in that
43799 regard?

Mr. Ransom: I object to it, they are two different things.

The Master: Objection sustained.

Q. Well, why did you take it out of Exhibit 497, and not write it off on the books?

Mr. Ransom: Objected to as fully covered.

The Master: Objection sustained.

Mr. Chambers: Exception. Made my point, have I?

The Master: Yes, certainly you have made your point. You have shown it was taken out in one way and carried in the account in another,
43800 you don't have to proceed any further with that.

Q. Now, take the 18th Street plant, have you included in plant account 18th Street the plant which was condemned by the City at 18th Street? Have you included that in your plant account?

The Master: In this Schedule B?

Mr. Chambers: Yes, in Schedule B.

The Master: Well, I understood the witness to say, Mr. Chambers, that all of this property taken by the City is carried in their plant equipment account and will be until they are—until

an award is made, but it is not in that other schedule treated anywhere. Now, why is it necessary to take every single item, except, if you like to say that certain figures are included in the statement made by the witness.

Q. Well, is that true, Mr. Carter, as to that 18th Street plant?

A. Yes, that is so.

Q. Now, in this Exhibit 497, how much of your plant did you take out for the 18th Street property? All of it?

A. Condemned and taken by the City, do you mean? 43802

Q. Yes. Did you take out just that portion that was condemned by the City?

A. We took out the portion that was condemned by the City and taken by the City and paid for by the City from the date throughout the entire schedule. It does not appear in the schedule at all to which you are referring. That is the schedule of the investment from 1906 to 1918. That refers to two different awards, I think one for the holder located on Eleventh Avenue between 19th and 20th Streets, which was taken out in 1910, out of the accounts, but taken out for the entire period from the exhibit showing the investment from 1906 to 1918, and the same ap- 43803
plies to the plant for which an award was made in 1913. They are taken out throughout the entire period covered by the exhibit.

Q. Now, do you recall the taking of that plant at 18th Street?

A. Yes.

Q. The whole plant was not taken, was it?

A. No.

Q. And what did you do with that portion of the plant that was not taken?

A. It was written off in 1914.

Q. All of it?

A. All of it that was not taken but which was not continued in service.

Q. Wasn't some of it when the City condemned some of it, the other part that was not used, was it, as I understand it?

A. Yes, a great deal of it was used.

Q. If the City condemned one-third of the benches in the retort house, you could not use the other two-thirds, could you?

43805 A. They were used for other purposes, for storage and—

Q. The benches?

A. I am inclined to think even the benches were, but certainly the building in which the benches were located was so used.

Q. You could not use them in making gas though?

A. No, not used for making gas used for other purposes.

Q. And they stayed in the capital account until you wrote them off, you say?

A. Yes, until they were written off in 1914.

43806 Q. Now, in connection with the 21st Street plant, do you remember a holder which collapsed in 1898 or 1899?

A. Very well.

Q. Now, did you include in that account that holder after it collapsed in this Schedule B, Exhibit 472?

A. It was included in the account until the matter was adjusted in 1908, when it was written off. It is not included, however, now.

Q. I did not ask you that year?

A. (Continuing.) In the investment as shown in the schedule covering the years 1906 to 1918.

Q. You are satisfied it is not in there at all?

A. No, it is not in there at all.

Q. Now, at what amount did you take it out at?

A. At the amount which had been expended on it.

Q. Where did you get that from, the Rowland appraisal?

A. No, because that holder was constructed subsequently to 1884, I think 1897 or 1898 or thereabouts.

Q. 1897 or 1898?

A. I think about then. 43808

Q. Well, it collapsed the next year?

A. It collapsed immediately, in fact it collapsed before it was actually put into service as a holder.

Q. It did not last very long, did it?

A. No, it did not last any length of time at all.

Q. Can you give me the amount at which it was credited in this Exhibit 497?

A. $214,955.87.

Q. That is the amount that you wrote off, that was written off in 1907 on the books?

A. In 1908.

Q. Was it then included in plant withdrawn from service on the books? 43809

A. Yes.

Q. Now, so far as the 21st Street plant is concerned, the balances which have been given in each year from November, 1884, the balances each year through January 1st, those include, do they not, benches and retorts which are not now in shape to be used? Do they include any such?

A. What figure are you referring to?

Q. I am referring to the 21st Street station, the different balances year by year that you have on the debit side?

A. What about it?

Q. I am asking if those balances do not include certain benches and retorts charged in in the account, which are not now in shape to be used?

A. No, I think not. For example, in 1887 you will find a credit there for 40 benches of 6's taken down and so forth, and I dare say that there are other credits, there were benches there that were used for oil gas production to enrich the gas at 14th Street, and they are still there and still available for that purpose, according to my understanding.

43811 Q. The ones that are there have not been used, the benches have not been used for a number of years?

A. I would not say when they were last used for the purpose as I have stated it, of producing a high candle power gas for enriching the 14th Street coal gas.

Q. You haven't used those benches, though, in a number of years, have you, to your knowledge?

A. I do not know when they were used last.

Q. You still carry them?

A. They are still carried.

Q. At what amount?

A. Any benches that are still there.

43812 Q. What amount?

A. I could not state, I could not state that.

Q. How many benches are there now?

A. I don't know.

Q. Like we have been talking about?

A. I don't know.

Q. Those benches are still carried in the Defendants' Exhibit 497, are they?

A. Yes, they are still in that exhibit.

Q. The ones that are there now?

A. Yes, they are carried there.

Q. They are included in your figures there for that plant?

A. Yes, they are.

Q. Well, in connection with the 44th Street plant, have you included certain retort house benches there in your Exhibit 497?

Mr. Ransom: Objected to as vague and indefinite, certain retort house benches. What does that mean?

Mr. Chambers: Well, all the retort house benches there at the 44th Street plant.

Mr. Ransom: 44th? 43814

Mr. Chambers: Yes, sir.

A. I am not sure about that, whether there have been any benches written off there in respect of that station that are still there or not.

Q. Well, take it—

Mr. Ransom (interrupting): I think the record ought to show, if you mean 44th Street, the testimony has plainly shown that there are none. it is only a holder station, nothing else.

Q. Do you know when you wrote off any retort house benches from the 44th Street plant, as shown by your Schedule B?

Mr. Ransom: I object to it, the schedule 43815
speaks for itself.

The Master: Objection overruled.

A. I find four double benches retired in 1892. Whether that disposed of all the benches at that station before the City condemned and took the property over or not, I am not sure. I should think it quite likely that that is so.

Q. I show you page 899 of Senate Document 47, and call your attention to the fact that Mr. Rowland set forth that there were 18 double benches there

that belonged to the Municipal Gas Light Company, property which he described as the West 44th Street, West 46th Street station?

A. 18 double benches.

Q. What did you do with those? You started out with them, did you?

A. Yes, they were oil gas benches. The oil gas was produced by bench process in those days.

Q. Did you find them in Rowland's appraisal of $139,021, or can you tell me?

A. Yes.

43817 Q. That is the amount you started out with?

A. Yes, as regards those benches.

Q. Now, you have given me all the retirements, have you, four of them you have?

A. No, I find more benches retired.

Q. When was the first one you retired?

The Master: He gave you that, in 1892.

Q. 1892, four. Now, when is the next, if you find any more that were retired?

A. I find 8 double benches retired in 1904.

Q. Any others?

A. None that I can identify.

Q. That leaves six unaccounted for, apparently,

43818 doesn't it, if that is so?

A. Yes.

Q. That 8 and 4 retired, that leaves 6?

A. Yes.

Q. Now, those benches at 44th Street station, if there are any there now, have not been used since 1906, have they, any of them?

A. Oh, yes, that retort house was used for storage purposes right straight along, and the benches themselves were used for storage purposes. I think they kept pipe and materials in them.

Q. The benches were used for storage purposes?

A. Yes, for storage purposes, the benches themselves, I have been told.

Q. You did not use them to make gas?

A. No, we did not use them to make gas.

Q. You call that using them?

A. No, not for gas making purposes, for storage purposes.

Q. That is, you did not need the benches, did you, for storage purposes, you would not say, would you?

A. We would not have constructed them.

Q. Well, what did you store there, can you tell me that? 43820

The Master: He has already said pipe.

A. Pipe and sundry materials.

Q. Now, the six that you have not accounted for, are those in that Exhibit 497 included in the manufacturing plant and equipment, or any other place?

A. Not since 1913. That station was condemned and taken by the City in August, 1913, and the investment in that property has been deducted from the exhibits showing the investments from 1906 to date.

Q. Well, before that, then, they were?

A. Before that they were. 43821

Adjourned to Tuesday, March 2, 1920, at 9:30 A. M.

Last Complainant's Exhibit 501.

Last Defendants' Exhibit AA-521.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 43825

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, March 2, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 43826
MR. O'BRIEN, of Counsel for defendant Swann.

ROBERT A. CARTER, resumed:

Mr. O'Brien: Your Honor, there is a comment here on this first page, I see, of this record of yesterday, that I think is very unfair. I do not know whether it correctly reports the statement from you.

The Master: In what respect? 43827

Mr. O'Brien: This colloquy between you and Mr. Chambers, on the front page here.

The Master: In what respect is it incorrect?

Mr. O'Brien: In reference to my absence yesterday.

The Master: What particular statement do you say is incorrect?

Mr. O'Brien: "He is rarely ever here on time. He may show up."

The Master: I repeat the statement. You

have rarely been on time. Today is one of the very rare occasions that you have been on time.

Mr. O'Brien: Your Honor thinks that is a fair statement?

The Master: I think it is a perfectly fair and accurate statement. Time and again you have irritated me by coming in late, when I have been waiting for you.

Mr. O'Brien: I have never subscribed to your Honor's rule with respect to the time when this court should meet. It is beyond your power to
43829 compel anybody to get here at 9:30 and stay until 6:00 o'clock.

The Master: Well, I apparently have succeeded in doing it.

Mr. O'Brien: You have, over our protest.

The Master: Well, you say it is beyond my power. The stenographer will not report any more discussion.

Cross-examination by Mr. Chambers:

Q. Mr. Carter, have you the 63rd Street station before you?

A. What schedule?

43830 Q. Schedule B, Exhibit 472.

A. Yes, sir.

Q. I show you the so-called Rowland appraisal, in which he sets forth some figures in regard to Avenue A and First Avenue, 60th and 61st Streets and 62nd and 63rd Streets, the property of the Metropolitan Gas Light Company, and show you an item where it says, "One Mackenzie Patent Exhauster of 150,000 feet per hour capacity for 24-inch connections $5,000." Did you include that in your credits on the credit side?

A. Not unless it has been withdrawn from service.

Q. Do you know whether it is in there at that price?

A. I assume so.

Q. On what do you base your assumption?

A. I say it is there unless it has been withdrawn from service, and if it has been withdrawn from service, it appears on the credit side of the account.

Q. Look on your schedule here and you will see a Mackenzie Exhauster transferred to 42nd Street at 2,000, $4,000. Do you think that is the same exhauster?

A. I think possibly it is the same one. Do you find 43832
two in the original schedule?

Q. No, just that one. So it is quite likely that is the same one, isn't it?

A. Quite likely, I think.

Q. Well, why didn't you credit it at $5,000, the same as it was represented by Rowland, instead of $4,000, if it is the same one?

A. Well, the amount to be withdrawn is determined by the engineers, and an examination of the underlying data would probably disclose that some part of the exhauster or connections or foundation or something was left and was available for some other purpose.

43833

Q. You don't know, do you?

A. No, I don't know that I have ever seen the exhauster particularly.

Q. You can give me no reason of your own knowledge why it is withdrawn at $4,000 instead of $5,000?

A. No. I assume that the reason that I have given is the correct one.

Q. Well, without any knowledge more than you have stated?

A. I think that assumption is justified.

Q. Mr. Rowland in his so-called appraisal of this same property, has set forth here frame dwelling house situate, standing detached, about thirty feet south side of 61st Street, commencing about 100 feet west of Avenue A, $5,000; frame dwelling house situate standing detached about thirty-five feet on the north side of 60th Street commencing about 100 feet west of Avenue A, $6,000, stable building two-story frame filled with brick, shingle roof, situated on 60th and 61st Streets about 200 feet east of Avenue A, $1,500, making a total of $12,500. You have in-
43835 cluded those three pieces of property, have you not, in your opening figure for the 63rd Street station of $205,025?

A. Yes, I believe they are included.

Q. Have you credited any of that $12,500 up to the end of 1918?

A. It would not be credited in the account unless the buildings were demolished.

Q. Can you say whether you did credit that item or any part of it?

A. I am not able without the underlying papers, the working papers, to discover these—

Q. (Interrupting.) You say you haven't your
43836 working papers here?

A. No, I have not my working papers here.

Q. Well, look over your papers.

A. I do not find any credit in this schedule representing the withdrawal of those structures.

Q. That would indicate that there were no credits?

A. That would indicate that they were still there.

Q. Now, that property that is described there is not used for the gas business, is it, and has not been since 1906, the property described by Mr. Rowland of $12,500?

A. The structures?

Q. Yes.

A. Yes, they have been there.

Q. What is that?

A. Yes, the structures have been there.

Q. No, I am asking you if it is used now, and has it been used since 1906, for gas business.

A. I will have to get my schedule and find out about that.

Q. Can you get it now, so we can close that chapter up?

A. Yes.

Q. That is Avenue A and First Avenue, 60th and 61st Streets, there are two dwelling houses and a two- 43838
story frame building.

A. No, there has been no deduction made on account of those structures.

Q. My question was, have you used the property?

A. Yes, the property has been used.

Q. What for?

A. I can't say at the moment. The fact that it has not been withdrawn in the books is the indication to my mind that it has been used and is used.

Q. That is the only—

A. (Interrupting.) That is the only reason that I have for believing that those particular structures are still in service.

Q. Well, that was true of the property condemned, 43839
that was not taken off, yet it was not used.

A. The property condemned was taken off when the award was made and the property so taken was withdrawn and not written off the books, but was withdrawn from Exhibit AA-496.

Q. I know, but, Mr. Carter, on your books you told me that a vast amount of property was condemned by the City and you have not even written it off to this date. Now, if your reason is good here, that the only reason why you say this prop-

erty is used is because it is still on the books, it does not apply because the property condemned was still on the books and was not used?

A. Well, I know of the property that is condemned. That becomes known through various channels.

Q. So, if there is any property on the books now that is not used and has not been used for some time and you have not written it off, you say it is still used because you still find it in the books?

A. It is still used unless it is withdrawn, or unless it is deducted from the property included in Exhibit
43841 AA-496.

The Master: What plant is this question directed to?

Mr. Chambers: 63rd Street.

The Master: What?

Mr. Chambers: Avenue A and First Avenue property.

The Master: What plant is that.

The Witness: The holder station there.

The Master: Oh, just a holder station?

Mr. Chambers: No holder stations there at Avenue A.

The Master: Well, it is not one of the manu-
43842 facturing plants.

Mr. Chambers: Not claimed to be used and useful by the company.

The Master: Mr. Maltbie, can you tell me is it one of the manufacturing plants?

Mr. Maltbie: No.

The Witness: No, it is not a manufacturing plant, there is no manufacturing plant in that vicinity.

The Master: I asked a perfectly simple question, I do not see why I should have such great difficulty in getting an answer.

Q. Isn't that property that I have just asked you about Avenue A and First Avenue, 60th and 61st Streets, on Exhibit 178?

A. It is on that exhibit.

Q. 178, in pink?

The Master: It is part of the property claimed.

The Witness: Yes, sir.

Q. All right. I want you to look and see if you are not mistaken about it.

The Master: Well, Alrich is the fount of all knowledge on that, he ought to know, he can tell us very quickly. 43844

Mr. Ransom: Block 1456, Lot 6.

Mr. Chambers: Let me take it.

Mr. Ransom: Well, we have got a lot of notes on this map that I am not very anxious to turn over to the defendants.

The Master: Oh, let him have it.

Mr. Chambers: There aren't any notes on that sheet.

Mr. Ransom: Not that particular sheet.

Mr. Chambers: That is the only one we are interested in.

Q. Where do you see that, Mr. Carter (handing map)? 43845

A. Not on that map.

Q. Not on that sheet, is it?

A. No.

Q. Well, run through that, will you, and see if you can possibly find it?

A. I do not.

The Master: Well, do you say it is not in there, Mr. Chambers?

Mr. Chambers: Yes.

The Master: Then don't waste time, Mr. Carter.

Mr. Chambers: Mr. Mrich will say so, it is not there.

Mr. Ransom: The lower property is non-gas, so stated.

Mr. Chambers: It is not claimed to be used and useful.

Q. Now, do you recall the testimony of Mr. Mrich that one of these buildings was credited on the books in 1919?

Mr. Ransom: Objected to as immaterial, whether he recalls it or not.

43847 The Master: No, that is preliminary to something, and I will allow it.

Q. Well, I will ask him if he can show me where one of those buildings has been credited in his account.

Mr. Ransom: I object to it on the same ground, that Mr. Mrich did not so testify.

The Master: But that question was reframed, so that it no longer is the same.

A. I have stated that I did not find it on this schedule of the account as withdrawn.

Q. I show you Senate Document 47, page 883, and call your attention to a brick foundation for purifier
43848 house at the 65th Street station, being recorded by Mr. Rowland in his so-called appraisal as "Brick foundations of purifier house (up to level of main floor), size of building 200 feet by 68 feet, with foundations for eight purifiers 27 feet by 25 feet, $12,000." Now, have you included that in your list of property for the 65th Street station, between Tenth and Eleventh Avenues, plant account in this Exhibit 472?

Mr. Ransom: I object to the question so far as it relates to the Rowland appraisal. This does not purport to be a compendium of the Rowland appraisal.

The Master: I know all about that. The question is, whether—

Mr. Ransom: Whether the books show such a thing.

The Master: That is not the question. The question is whether it is included in that statement 472.

Mr. Chambers: If he knows.

Mr. Ransom: Included when?

The Master: As of 1884.

Mr. Chambers: Any time. It is not in there at all. 43850

A. It was included in 1884.

Q. Then it is included in your opening figure is that right?

A. Yes, 8387,448.

Q. Yes, it is in there somewhere?

A. Yes, if it is in the Rowland appraisal.

Q. And therefore it is not that figure you have just given?

The Master: Yes, surely, he said that. Now, your point is that it has not been withdrawn?

Mr. Ransom: He won't claim that.

The Master: I know, but you have given here some schedules which you would say is the book condition. 43851

Mr. Ransom: I say Mr. Chambers would claim it has not been withdrawn.

Q. Has there been any manufacturing plant at the 65th Street station since 1884?

A. No.

Q. Has there been any purification of gas at the 65th Street station since 1884?

A. No.

Q. Has any purifier been used at the 65th Street station at least since 1906?

A. There is nothing here about any *purifiers*.

Q. That is not what I asked.

The Master: Just foundations?

The Witness: Yes, sir, just foundations.

Q. I asked you if any purifier had been used there since 1906?

A. I answered your question.

The Master: Not since 1884?

The Witness: Not since 1884.

Q. No gas has been purified there?

A. No.

43853 Q. Now, has that property, the $12,000 for the brick foundation of purifier house been withdrawn from service, and is it credited here in your schedule?

A. You are referring now to the 65th Street schedule?

Q. Yes, this same one?

A. No, no withdrawal.

Q. Now, do you know anything at all about that foundation for the purifying house?

A. No.

Q. And you don't know when it was withdrawn? I mean you do not know what you used it for?

43854 A. I know that there have been structures put up there since that property was acquired and—

Q. (Interrupting.) You don't know what date?

A. I should rather assume that the foundations have been used.

Q. I will just show you where you withdrew it here. Did you know that you withdrew it here in 1918, brick purifier house and foundation?

A. Yes.

Q. Some old foundations. Apparently that is the same one, isn't it, showing your withdrawal of brick purifier house and foundations $12,000?

A. Yes, that is, you are correct.

Q. That is the one in 1918?

A. Yes.

Q. Why didn't you withdraw it in 1906, instead of 1918?

A. I presume that the engineers reached the conclusion in 1918 that they would not use it.

Q. Why didn't you withdraw it in 1884?

Mr. Ransom: I object to it as fully answered.

The Master: No, I will allow it.

Mr. Ransom: He assumes that because a house is a purifier house, that it must have been 43856
used for a purifier.

The Master: No, it is a fair question. Here are some foundations that were not used since 1884. Why didn't the company withdraw them in 1884?

The Witness: We depend on the engineering department, your Honor, to advise us when property is not required for gas purposes.

The Master: Either present or future?

The Witness: Exactly.

The Master: If they believe they will have a future use for it, they keep it until they do not think any future use can be made of it? 43857

The Witness: Yes, that is the case.

The Master: Well, to be perfectly fair with you, let me indicate by a question. Did it take them all the time from 1884 up to 1918 to discover that?

Mr. Chambers: That is what I was going to ask, why it took 34 years to discover whether that was useful and needed.

Mr. Ransom: Are you referring to the house or foundations?

Mr. Chambers: The Master knows what I am referring to.

The Witness: It apparently did.

Q. Now, the 99th Street plant, I call your attention to Senate Document 47, so-called Rowland appraisal, page 888, 2 benches and foundations valued by Mr. Rowland, appraised by him, or at least set forth in his schedule, for the Knickerbocker Company, I do not think he even appraised it, but he put down the figures here of $15,000.

Mr. Ransom: I move to strike out the com-
43859 ment of counsel that he does not think he appraised it.

The Master: No, I will let it stand.

A. What is the station you are speaking about now?

Q. 99th Street?

Mr. Ransom: The record shows what Mr. Rowland did.

Q. One item containing foundations for plant, $14,650, and another item 14 double benches of 6's, 12 inch by 20 inch by 18 feet, fitted with mouth pieces, stand, bridge, and—

The Master (interrupting): And other details.
43860 You do not have to read it all.

Q. (Continuing.) And other details, $44,000 those two making $58,650. Did you start out with that in your opening figure?

A. Yes, that was included in the opening figure. If it had been withdrawn from service, it has been credited in the account; otherwise it has not.

Q. I just asked you if you included it, and you said yes?

A. Yes.

Q. Did you find that the foundations and those

benches and other properties there described have been withdrawn from service?

A. I am not able to—

The Master: Let us save a little time, Mr. Chambers. If you know whether it was or was not so, say so.

Mr. Chambers: I do not find it.

The Master: Well then, put your question, you don't find that that was withdrawn from service, let us lead him right to the point and get through with it.

Q. You do not find that any of that was with- 43862
drawn?

A. No, I do not find that it has been withdrawn.

Q. Now, do you know anything about whether those benches and foundations have been used since 1906?

A. No, I do not.

Q. Were you present in court when photographs were offered in evidence of those?

The Master: I will sustain the objection to that. It doesn't matter whether he was or was not. Your contention is that the photographs show that they were not used?

Mr. Ransom: That is the benches, the founda- 43863
tions. The situation as to both the foundations and benches was covered by Mr. Aldrich on the examination.

Q. If those benches have not been used for gas purposes since 1906 or before that, and they have not been retired here, they should be?

Mr. Ransom: I object to that.

The Master: Objection sustained as argumentative.

Q. Did you make any attempts to find out whether those particular pieces of property should be withdrawn?

Mr. Ransom: I object to it.

The Master: I will allow it.

A. No.

Q. Take the 111th Street plant?

A. I assume that they were not withdrawn, because there was no report to that effect from the engineering department. I beg your pardon, as to that last question.

Q. The 111th Street plant?

The Master: This examination again illustrates, Mr. Chambers, what I said a long while
43865 ago. It is perfectly easy for you to check up tables of this kind and direct your attention to the points where you say the tables are wrong. That is just what you are doing now, and doing it very well, and we are saving a lot of time.

Mr. Chambers: All we had time to do was to get two or three.

The Master: Oh, you have gotten all of them, I guess.

Mr. Chambers: No, by far.

The Master: Well, so far as you went, at any rate, it illustrates what I have said right along, it is perfectly easy to check up these things and
43866 then just ask the questions that bring out the points.

Mr. Chambers: Yes, you could check them if you had the time, but we have not had any time.

The Master: I am referring now to the argument you gave me some months ago, that that was not the way to handle it.

Mr. Chambers: You either have to have time to check them, or else get them on cross-examination.

The Master: Yes.

Mr. Chambers: And when the books were in,

you forced us to the position of getting them in cross.

The Master: Some way or other, without having any argument with me this time, you are doing precisely what I said you should have done months ago.

Mr. Chambers: Just these few things. You did not give us time. We have never had time.

Mr. O'Brien: Apparently your Honor is trying to modify the ruling you made on November 20th.

The Master: No, I am not at all, I am pointing out on the record that my ruling was right. 43868

Mr. O'Brien: You have been trying to take the edges off that ruling ever since you made it, you have appreciated since then that you were in error when you made that ruling, and you have been trying around and around since, by frequent recurrence to the question of what we ought to do to bring out useful points—

The Master: We won't have any more discussion about it.

Q. For your schedule of property concerning the 111th Street station, did you include all of the retort houses appraised by Mr. Rowland in your opening figure? 43869

Mr. Ransom: Objected to as incompetent and immaterial.

The Master: Overruled.

A. Everything in the Rowland appraisal aggregating $826,175 was included.

Q. You have that wrong, haven't you?

A. When I say 806 for 111th Street, that is taking out linwood, yes.

Q. And I say that you took out, or you have on your credit side here, an old retort house at that 111th

Street plant, $27,500, and then some other items?

A. Yes, there has been very substantial withdrawals. The plant there was condemned and taken by the City of New York in 1897, I think.

Q. Taking all that property, which is over a million, when did it cease to be used, have you any idea?

A. No, I don't know when they discontinued using or operating it.

Q. Now, you credited it here in 1911, I see.

A. What in 1911?

Q. The old retort house and foundations.

43871 A. That was in use until then.

Q. Benches in retort house. All of that was in use?

A. Not for gas making purposes. It had only been used, I think, for storehouse at that time.

Q. How could you possibly use the benches for storage?

A. The benches I believe were not in use.

Q. And although you withdrew them in 1911, it was not used, was it, prior to 1906?

Mr. Ransom: What was not used?

The Master: Those benches.

Mr. Chanders: He knows.

43872 Mr. Ransom: What are you—you are relating to a building as to which the use has been fully testified to here.

The Master: He is cross-examining Mr. Carter.

Mr. Ransom: You ought to make your question mean something, relate to something definite.

A. I have stated that the building was not used right up to the time it was withdrawn.

The Master: I understood the question to relate to the benches.

The Witness: The benches, I do not know that they were used. They were certainly not used for gas manufacturing.

Q. What did you use the building for after 1906?

A. Well, I knew at that time, but I do not recall at the moment what use was made of it. For storage purposes among others I think.

Q. Well, that storage purposes is pretty indefinite. Have you any idea at all?

A. No, I do not recall at this time what use it was put to.

Q. In Schedule C you have tabulated feet of mains 43874
laid, you have headed that "Investment in Street Mains." First of all, what do you mean by that term "Investment"?

A. What the mains cost us.

Q. What?

A. What the mains cost us.

Q. You changed your phraseology from the other exhibit I have been asking you about. Is it the same thing?

A. What is the number, C?

Q. C.

A. If you will read the cover, it says, "Detailed Statement of Cost of the Company's Street Mains 43875
and Services."

Q. Well, then, up at the top you use the word "investment"?

A. As explained before, the two are synonymous in this case.

Q. Your schedule includes, does it not, all mains laid for other companies from 1906 to 1918?

A. All mains laid?

Q. For other companies?

The Master: For other companies.

Mr. Chambers: Yes.

43876 Robert A. Carter, Cross.

A. Until they are transferred to the other companies and paid for, they may show in this account.

Q. Well, they are all in here, aren't they?

A. I do not think they are all here. I think that it was only for a while that they were included, and occasionally.

Q. When? A. Well, when the main—when the work on extending the main would extend over the end of the year, or the—

Q. Isn't it a fact that your Schedule C in 1896, 1897, 1898 to 1918, includes mains laid for other
43877 companies? Can you answer that direct?

A. In the final total?

Q. The feet of mains laid, I do not mean dollars.

A. Do you mean the final total, the aggregate amount shown by the schedule?

Q. I mean these figures here as you go along, the feet of mains laid?

A. I said they were, say, for the period—

Q. The first column I am speaking about, feet of mains laid?

A. Yes.

Q. That includes, does it not, mains laid for all other companies?

43878 A. Not in all cases.

Q. Well, what are omitted?

A. And I say, after 1891, hardly at all.

Q. How can anybody tell what proportion of those feet of mains laid were for other companies?

A. Well, take the year 1890, I do not think any; 1891, none; 1892, none; I should be inclined to think.

Q. Well, take 1896?

A. 1896, yes, I should think that that was the case there.

Q. You mean that it includes mains laid for other companies?

A. Yes, I should think that was so.

Q. In 1896 can you tell how many feet of mains there were laid for other companies that is included in your figure?

A. Oh, I should thing probably all of that 36-inch main.

Q. Was laid for other companies?

A. Yes.

Q. Is that all, just the 36-inch main?

A. Yes, I should think that was all.

Q. How about 1907?

A. Possibly that 30-inch main. 43880

Q. In 1906?

A. In 1906.

Q. Any others?

A. Why, no. In 1900, that 142 feet—that 5,628 feet of 24-inch main, I would not be sure about whether that was taken out in connection with some street subway operations or not. I could not say.

Q. Who can say?

A. The books will indicate it.

Q. Well, you took this off the books, didn't you?

A. These were taken from the books, yes.

Q. Now, are there any other mains there in 1900 that were laid, that you include in feet of mains laid, laid for other companies except those you have named? 43881

A. Well, I should have to look at the accounts to determine whether those mains were sold to other companies and laid for other companies, or not.

Q. You cannot tell me now?

A. No, I cannot tell you now.

The Master: Well, where is that taken care of in this account?

The Witness: By a credit.

The Master: Where?

The Witness: In the mains account. Only the net figure for the year is added there for 1907. You will notice for the previous year there was a credit of $3,760'80, and in the previous year there was quite a substantial credit, $241,000.

Q. It goes over in the balances, however, doesn't it?

A. Those mains that were credited there?

Q. Yes.

A. No, they were not included in that balance.

4388.3 They were deducted before that balance was reached.

The Master: Well, in which column do you include mains sold to other companies?

The Witness: They come in under the mains taken out or abandoned.

The Master: They are included in mains taken out or abandoned?

The Witness: Yes. It is not a good heading, your Honor, but it is where they would appear.

Q. Now, in 1907, can you tell us how many mains there were laid for other companies, have you any idea?

4388.4 A. 1907?

Q. Yes.

A. If you say sold, I should say that it was all laid finally on the other companies' credit.

The Master: What mains?

The Witness: You are speaking now of the 5,628 feet of 24-inch main?

Q. No, I am speaking of the 37,259, all the mains laid, feet of mains laid in 1907 on that sheet there.

The Master: In the first column.

A. What about them?

Q. How many feet of the 37,259.4 was laid for other companies, can you tell, in 1907?

A. I should say practically none of it.

Q. What is that?

A. I should say practically none of it.

Q. Well, practically. Was there any of it, do you know? If you don't know, all right.

A. I should say no, none of it; that is my best opinion on the matter, none of it was laid for other companies, it was all laid for our own purposes.

Q. The 24-inch main, still speaking of 1907, taking that 24-inch main, 5,628 feet taken up or abandoned, was that sold to some other company?

A. I believe it was. 43886

Q. What company was that?

A. I do not know at the moment.

Q. Well, when was that laid, then?

A. Laid in 1905.

Q. Then you laid it apparently, we find that up there in 1905, 24-inch main 5,628 feet?

A. Yes.

Q. And you laid that for, do you remember what company?

A. No, I do not remember.

Q. Then down here you carried it until 1907?

A. Yes.

Q. Two years? 43887

A. Yes.

Q. When you treated it as taken out or abandoned?

A. Yes.

Q. Which title, you said, was not quite up to the snuff, or quite accurate?

A. What is that?

Q. I mean, mains taken up or abandoned does not truly represent the situation, does it?

A. No, I believe it does not.

The Master: Is it your testimony that as of

January 1, 1918, the balance in this account is accurate?

The Witness: Yes, sir, it is accurate.

The Master: And does not include any mains laid for other companies?

The Witness: No, sir.

The Master: Well, now, just to make my question clear, this exhibit shows balance December 31, 1917, $10,986,091.88. Is it your testimony that there is nothing included in that figure for other companies?

43889 The Witness: Yes, sir. What amount are you speaking of?

The Master: December 31, 1917.

The Witness: Yes, sir, there is nothing there for any other companies.

Q. In 1906, take that 36 inch main, 19,008, taken up or abandoned, was not that laid for some other company?

The Master: What year?

Mr. Chambers: 1906.

Mr. Ransom: I object to the question, the counsel is confusing between mains sold to other companies and mains laid for other companies.

43890 A. That was laid in 1904, for one of the other companies.

Q. For what company?

A. I don't know which company.

Q. Well, I see in turning over to 1904, I find 36 inch main 19,050 feet laid.

A. Yes.

Q. That does not quite agree with that?

A. It would not, of necessity. We would lay some—

The Master (interrupting): For yourself?

The Witness: For ourselves, yes.

Q. So you think that that was laid in 1904, and you carried it until 1906?

A. Yes, sir.

Q. Is that true all the way through, does that point that I have just brought out emanate all throughout?

A. Yes, because it takes some time to fix up the account, get all the bills in.

The Master: In other words, a period lapse sometimes as long as two years.

The Witness: No, hardly two years. It might be thirteen or fourteen months, that is from fall around to the spring. 43892

The Master: Well, from 4 to 6 and from 5 to 7, at any rate it is the fact that you carry it for a year or more, running into the second year?

The Witness: Yes, sir.

The Master: Now, is there any claim, Mr. Chambers, that on December 31, 1917 there was any property still carried that was laid for other companies?

Mr. Chambers: We cannot tell. They may have laid mains for other companies, and may be still carrying them.

The Master: Well, the witness swears that there was not so I suppose I will have to take it. 43893

Mr. Chambers: Well, he was not sure about that other property, you remember.

The Master: Well, I understood he was sure about this though. I understood you to testify, Mr. Carter, that you knew that on December 31, 1917 there were no mains laid carried for other companies.

The Witness: No, 1918.

The Master: I said December 31, 1917.

The Witness: Well, I had 1918 in mind. My information was that there was not.

The Master: We are trying to locate the invested capital, or whatever you may call it, beginning January 1, 1918, for the year, 1918.

Mr. Chambers: Now, has he answered that question, on January 1st, whether there were any?

The Master: Not yet.

The Witness: I would say that that was so in 1917, as well as in 1918, that is the best of my belief and knowledge.

The Master: Well, if there are any that you
43895 have overlooked here that you do not recall them, it was a very small item?

Mr. Chambers: Oh, now, if the Master please, maybe it was a big item.

The Witness: I would say that is so.

The Master: The reason I made that statement was that I have a very distinct recollection from the testimony that for some few years there has been no extensive main laying work done, so that it necessarily followed that if there were some mains laid for other companies in 1917 or 1916 or 1918, that it could not amount to an awful lot, and we might just as well be
43896 fair about those things.

Mr. Ransom: Exhibit 369 in evidence shows exactly that situation.

Mr. Chambers: I object to Mr. Ransom testifying. I am cross-examining the witness.

The Master: Go ahead.

Q. Mr. Carter, who got up this mains schedule for you here, Schedule C, I do not know the exhibit number yet.

The Master: Exhibit 473.

A. Those were gotten up in the accounting department.

Q. The same man you spoke of before worked on it?

A. Yes, sir.

Q. What did you have to do with it, if anything?

A. I checked it over.

Q. I mean—what do you mean, how did you check it, what did you do?

A. With the company's ledger and the schedule, and checked them.

Q. Well, what ledger did you use?

A. Operating ledger.

Q. Any other books? 43898

A. Yes, the general account books from—prior to 1900, the operating ledgers since 1900, the general ledger.

Q. And any other books?

A. The general ledger.

Q. And any other books or records?

A. The general office—that is, the street main department record of mains, also.

Q. Any others now? I want a complete list of all you have used?

A. I do not recall any others.

Q. You used the—

The Master: Do not repeat now what he said 43899

Q. That is all, is it?

A. Yes.

Q. When did you find time to check up these figures, when did you do it?

A. I did not check them up.

Q. The lengths?

A. It would not be necessary for me to check them up. I checked them enough to satisfy me that they were correct, and I believe them to be correct.

Q. Well, how many did you check on this first page, say of Table C?

A. I do not know that I checked any on that page. I would not recall which ones I checked. I took them at random and tested them for that purpose.

Q. In all these lengths of mains, how many did you check?

A. Not for this particular purpose, the main record at all. The main record I have been familiar with for a great many years.

Q. Well, do I represent you when I say that you took this on the faith and credit of the man who did do the work?

43901 A. Not as to the amounts involved.

Q. But as to the feet, size and feet?

A. Yes, as to the size and feet.

Q. And mains taken up?

A. Yes.

Q. What do you mean you checked, the dollars here?

A. Yes.

Q. How many of those did you check?

A. Enough, as I have stated, to satisfy me.

The Master: Can you give Mr. Chambers any idea whether it was two or fifty?

The Witness: Oh, a dozen or so of items, bal-

43902 ances. There were only about thirty-five that I would check, because I checked the amounts, the aggregates shown in the general books.

Q. Well let's take one right here, now. Take this item of the one we have been talking about. No, I will take another one here. Four inch main, 10,546 taken up or abandoned, $10,360. Now, tell me with what book you checked that 10,360 where you found that figure?

Mr. Ransom: What year is that?

Mr. Chambers: 1906.

Q. Now, there is a figure of $10,360 for those 4 inch mains. Where did you go and what did you do when you checked that, if that is one you checked?

Mr. Ransom: Where do you find any such dollar item?

Mr. Chambers: Well, I repeat again for your information, 1906, 4 inch main, 10,360 feet.

A. I said I did not check that, I said I checked the amount.

Q. Well, let's take 1907, this is dollars, you have the total there of $287,583.16.

A. Yes. 43904

Q. What does that total mean, total of what, or is that the cost of what? That is the cost, isn't it, your cost, what you claim as cost?

The Master: Suppose you let him answer.

Q. Well, I will put it, it is what you claim is cost.

The Master: Have you got it the way you want it now?

Q. The way I want it is, what is it.

The Master: Well, what do you want?

Q. Well, what is that?

A. That is the net increase in the company's investment in mains during that year 1907.

Q. Now, tell me how you checked that figure. 43905

A. Not stating that I checked that particular figure: I can tell you how it would be checked.

The Master: How did you check similar figures?

The Witness: In the operating ledgers, your Honor, there is that balance of $7,782,339.35, which appears as the balance in the account as of that date.

Q. In that figure, just like that?

A. No, I think that might represent perhaps main

projects that would have to be brought together in order to get that amount.

Q. Now, that is what I want you to tell me, the process, the acrobatics, or whatever it was you went through to gather them together and check it?

A. I did not have to go through any acrobatics, that amount of $7,782,339.35 appears in the operating ledger.

Q. I did not ask you a word about that figure.

The Master: Let him finish.

Mr. Chambers: Well, I object as not respon-
43907 sive.

The Master: He is responding.

A. And the balance as of the first of the year, $7,494,756.19, also appears in the ledger.

Q. Yes?

A. And the difference between those two is the net increase in the investment in mains during that year, $287,583.16.

Q. That is to say, you worked backwards from the $7,782,339.35, you had that, and then you moved backwards to this $7,494,756.19?

A. Yes, that is the way.

Q. And subtracted one from the other, and found
43908 that other figure?

A. Exactly.

Q. Well, it was not any checking back of that amount?

A. Yes, there was a checking of that month.

Q. That is a year, isn't it?

A. That is a year. I did not say anything about a month. I said at the beginning of the year, and if I did not I did not quite properly express myself. The amount at the beginning of the year and the amount at the end of the year in the account to the

debit of that account indicates the net increase in the investment during the year.

Q. Well, you can't tell me, can you, how you checked that $287,000?

A. Yes, in that manner.

Q. How do you know that that $287,583.16 is correct? I know that you told me that you subtracted one from the other, but how do you know that figure is right?

A. Because it proves.

Q. What is it made up of, where are the items that make it up? 43910

A. They appear in detail.

Q. Well, where?

A. Your people have been checking them over and over and over again for six months.

Mr. Chambers: I object to that.

Q. Where do those items appear?

A. In the operating ledger.

Q. In what manner—have you got your working papers, so you can tell me how many sums make up that $287,000?

A. No, I have not.

Q. Is there any place where the items appear?

A. No. We have not copied the operating ledger 43911
for the purpose of making up this statement. That amount can be checked very readily and in as much detail as any accountant thinks it is necessary to check it in order to satisfy himself it is correct.

Q. Well, you did not check any of those items that go to make up the yearly net amount, did you?

The Master: Don't let us waste so much time on that. There are schedules offered by the defendants showing their analysis of those very figures.

43912

Mr. Chambers: If the Master will say they are correct—

The Master: No, I won't say anything about it at this time, but I know that your men have put in schedules here showing their analysis of this mains account, and there is a schedule in here showing the book, less depreciation that Mr. Maltbie put in.

Mr. Ransom: And Mr. Teele shows these things in a mass of detail just where each amount is put in.

Mr. Chambers: Well, why do you say we are
43913 wasting time?

The Master: Because I think so.

Mr. Chambers: Well, I object and protest against the remarks of the Master about wasting time.

The Master: I only say it when I think so.

Mr. Chambers: Have I made my point that it is worthless?

The Master: No, I won't say you have made your point that it is worthless.

Mr. Chambers: Well, if I have shown it is worthless, and then I am going beyond that, I might concede that I am wasting time.

43914 The Master: Why, if this schedule were produced, Mr. Chambers, in the case standing alone, without the opportunity which has been afforded your men to check and examine and cross-examine these books to your heart's content, and if there were not other evidence in the case justifying these figures and setting them out in different form from half a dozen different angles, I might agree with you that perhaps this schedule was worthless, but this schedule taken in connection with all of the other evidence in this case

is not worthless. You have made your point, so far as it has any force.

Mr. Clark: I take exception to your Honor's statement that we have had time to check these things. We only received them last Friday.

The Master: All I can say is that you had these schedules for months.

Mr. Chambers: But we were not advised that they were to be put in on rebuttal.

The Master: Yes, you were.

Mr. Ransom: They checked the Teele schedules which were given to them away back in the 43916
summer, which showed these things in great detail, greater than this particular exhibit does, because it shows item by item, main by main, year by year—

The Master: The stenographer will not report any more discussion.

Mr. Chambers: I take an exception to the remark that we have had time to check. We have been rushed to death and never had sufficient time to do anything that we wanted to do.

(Discussion off the record.)

Q. The balance as shown in this Schedule C, Exhibit 473, includes mains not in use, does it not? 43917

A. It includes disused mains, yes, which have not been abandoned.

Q. Well, running all through here are mains which are not in use and are included?

A. Yes, not immediately in use.

Q. You haven't any idea how many of those there are, have you?

A. The record indicates the amount of disused mains, and your men have had made up and put in exhibits stating the amount of feet in different sizes.

Q. That is to say, you have a lot of mains in the streets of the City of New York, Borough of Manhattan, which you are not now using, and have not used for some time, and you are permitting them to lie there in the streets?

A. If they were reported by the Street Department as abandoned we would not take them out, we would not bother to dig down and remove them, because it would cost a great deal of money to do it.

Q. So you cut them off—you could cut them off?

A. Yes, they could be cut off.

43919 Q. And you have included them in the account of mains in this schedule, have you not?

A. Of mains not abandoned or taken out.

The Master: I do not think the record is very clear, Mr. Carter. You have not been listening to the question. The question Mr. Chambers asked you was whether abandoned mains are still in the street.

The Witness: Oh, no.

The Master: Well, you said yes, and properly so, you properly answered that question, that abandoned mains are still in the street, because it does not pay to take them out.

43920 The Witness: Exactly.

The Master: The next answer you gave, that I do not believe you intended, and that is, that those abandoned mains were carried in this exhibit.

The Witness: No, he said disused mains.

The Master: That is why I am trying to get this clear. You had already said that mains temporarily out of use but not normally abandoned by action of the engineers of the company, were carried in this exhibit.

The Witness: Exactly.

The Master: You draw a distinction between mains that are not presently in use but have not been formally abandoned and mains that are not in use and have been formally abandoned.

The Witness: Decidedly.

The Master: Now, Mr. Chambers' point is, and it is all clear in this record, and you have admitted it, and there is no sense spending any more time on it, that there are a number of mains that are not presently used and have not been used for days or weeks or perhaps months. 43922

Mr. Chambers: Years.

The Master: Well, I don't know how far it goes. They are not in use, but you are still carrying them as part of your main account?

The Witness: Yes, sir.

The Master: Now, go ahead with the next one.

Q. And you carry them until somebody pronounces the death sentence over them, do you, or the word abandoned?

The Master: Yes, the witness has so testified.

A. Yes, until the street department reports that 43923 they have been cut off and abandoned.

Q. And if they took 34 years to make up their minds whether they would pronounce the word abandoned, you would carry them just the same?

The Master: I instruct the witness not to answer.

Mr. Goetz: I object as argumentative.

Mr. Chambers: I think you ought to permit the witness to answer.

The Master: No, I will answer it myself.

Mr. Chambers: Exception.

43924 Robert A. Carter, Cross.

Q. The balances at the end of each year in this Schedule C, Exhibit 473, are the unrevised balances, are they not?

A. They are shown by the books.

The Master: What do you mean unrevised? They are the book figures, as I understand it. Have you any point about the word unrevised that I do not get?

Q. I will ask it this way. The balances at the end of each year are the balances without any changes of any kind, so far as abandoned or disused or mains
43925 laid for other companies are concerned?

The Master: I won't allow that question.

Mr. Ransom: Changes from what?

Mr. Chambers: Exception.

The Master: It is not clear to me.

Mr. Chambers: Well, I do not think the Master is the judge, if the witness understands.

The Master: I won't allow a question that is unintelligible to me.

Mr. Chambers: Exception.

The Master: Or I am going to ask the witness, if you won't. These balances that you show include, as you have already stated, disused
43926 mains?

The Witness: Yes, sir.

The Master: And you have not revised the figures by taking out disused mains?

The Witness: I have not.

The Master: It does not include abandoned mains?

The Witness: It does not.

The Master: So that there is no revision to be made on them or adjustment?

The Witness: No, sir.

Q. It includes mains built for other companies?

The Master: It includes mains built for other companies, does it not, in the first instance?

The Witness: In the first instance.

The Master: And in your second column you have credited the account with mains sold to other companies?

The Witness: Yes, sir.

Q. At a later date?

A. In some instances.

The Master: So that the balance, as you have already testified, December 31, 1917, or January 43928
1st, 1918, so far as you know, contains no figure which requires an adjustment, according to your theory?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: All right, I will withdraw it.

Q. Take your Exhibit 496, the summary, you have a figure of $11,027,266.24 street mains as per Schedule C. That includes, does it not, mains not in use?

Mr. Ransom: The total is shown on Exhibit C.

The Master: That figure tallies with the figure on Exhibit C as of December 31, 1918. 43929

The Witness: Yes, sir.

The Master: And the answers given as to Schedule C therefore apply to this Exhibit 496, and the question is not allowed, simply repetition.

Q. Do they?

The Master: The question is not allowed, it is repetition.

Mr. Chambers: Exception. I would like to have him answer that.

The Master: I won't take it, simply because I want to make a rule limiting this situation.

Mr. Chambers: Exception.

Q. Is it not a fact that it was the practice of your company, so far as services were concerned, to charge the item of Pipe and Fitting to services, whether the pipes were laid or not?

A. Certain sizes of pipe intended for—

Q. Service use?

A. (Continuing.) Service use, were charged to services as material was purchased, and in case the
43931 material was used for any purpose the services account was credited.

Q. Didn't you use those pipes and fittings for other companies?

A. If so, other companies were charged for them.

Q. It is in this account, however, is it not?

The Master: What schedule is that you are working on now?

Mr. Chambers: Schedule C, way over in the back.

The Master: Isn't all that the witness has said applicable to services?

Mr. Chambers: No.

43932 Mr. Goetz: The last two pages.

By the Master:

Q. Did you follow the same plan as to services that you did as to mains?

A. Exactly the same; yes, sir.

Q. And you might carry services for some time before being discarded?

A. No services would be billed within the month.

By Mr. Chambers:

Q. If you carried this pipe and fitting before the services were laid in your account—you carried the

pipe and fittings that were used by other companies—it appears in this account, does it not?

A. Not after it has been used for other companies.

Q. You included it in your account until it was used by other companies?

A. Pipe of certain sizes, as I stated.

Q. What sizes were those?

A. I would not undertake to say.

Q. And if it was several years before it was used, that cost of that pipe and fittings would be carried in this account, would it not, and you have it?

A. We do not carry several years' stock of mate- 43934
rial of that kind.

Q. Two years—a year?

A. A year, yes.

Q. Two years, maybe?

A. Possibly, some size.

The Master: I have not got this clear in my mind. Does Schedule C include pipe and fittings in stock?

Mr. Chambers: Yes, as we claim.

The Witness: Schedule C includes, not the pipe and fittings in the very broad sense, but certain sizes that are bought only for services, and they are charged directly. Now, I am re- 43935
ferring to a practice that I was familiar with some time ago, and I am assuming that it is still continued, without knowing definitely, because I have not had occasion to inform my mind on the subject. But I know that it was the practice, your Honor, to charge directly to the services material that was bought for new services.

By the Master:

Q. Instead of putting it into a stock account?

A. Instead of putting it into a stock account and

handling it back and forth with the supplies. It would save labor and save trouble and expense to do it.

Q. Some of those pipes might be used for other companies?

A. In which case it is so reported.

Q. After they were used?

A. After they were used; but it is not a substantial amount.

By Mr. Chambers:

Q. Also the pipes that have not been used for services would be in this account?

43937 A. Yes. I am assuming that that practice is still in vogue. I would not like to say that definitely; I know that it used to be done, and I am not sure whether it is done now or not.

Mr. Goetz: Mr. Teele has testified to the contrary on that.

The Witness: I think that may have been abandoned some time ago.

Mr. Goetz: I think so.

The Witness: And your people know very well whether it has or not.

The Master: These services acquired at consolidation, a total of over a million dollars, in-

43938 cluded pipe and fittings on hand?

The Witness: I think not in that case at all, only the services that were in the ground, and the practice that I have referred to was undertaken merely as a matter of convenience and economy. I would not say that it has not since been abandoned, but the amount would be inconsiderable, in any event, and if we took it out of that account we would put it into some other proper account.

Q. What do you mean; would you call $21,000 an inconsiderable sum?

The Master: Out of over a million, is it?

A. Well, it is 2 per cent—less than 2 per cent.

The Master: When we are talking of forty or fifty millions it is inconsiderable.

Q. Didn't it reach as high as $21,000 at some time?

A. Do I understand you to say that your experts have found any such amount at the present time?

Q. Not at the present time, no.

A. Not at the present time. Then the practice has been discontinued, as I thought it might have been.

Q. But I was trying to find out, Mr. Carter, what 43940
your idea of the inconsiderable amount was. Was $21,000 inconsiderable, if carried in this account as capital oftentimes for pipe that was in stock, pipes and fittngs in stock that were afterwards used by other companies? It was often as much as $21,000. Do you mean to say that is inconsiderable?

Mr. Goetz: I object to that as argumentative, and it does not relate to any particular time.

The Master: Overruled. He has said it was inconsiderable; I will let him answer this.

A. It is a capital account, in any event.

Q. Your idea is it is a capital account, anyway?

A. No, it is a capital account, whether it was car- 43941
ried—

The Master: We have had enough of that. I want an answer to this, Mr. Chambers: Complainant's Exhibit No. 367 shows in 1915, folio 1 of the ledger, transferred to Pipe and Specials; isn't that the time when this system was changed?

Mr. Chambers: What, 1913?

The Master: 1915?

Mr. Chambers: About, yes.

The Master: So that since 1915 this account has not been carried in that old form?

Mr. Chambers: I understand that is correct.

The Master: Let us get to something else now.

Q. Take Schedule D.

A. Schedule D?

The Master: What is that?

Mr. Goetz: Automobiles, scows, meters.

Q. In regard to this schedule, Complainant's Exhibit 474 you set up an account here for meters and
43943 miscellaneous. The miscellaneous are these cocks and connections and furniture and fixtures, Mr. Carter?

A. Yes, sir—horses, wagons and harness, tools and implements, scows, gas appliances rented, automobiles and accessories.

Q. You started out with Rowland's appraisal figure?

A. Yes.

Q. Who made this schedule up for you?

A. The same staff.

Q. What books did they use in regard to meters; where did they find the meters?

A. The same books that have been described.

43944 Q. What check did you make of these meters?

A. The same as of the other schedules.

Q. Meters for other companies included in these?

A. No.

Q. In this account?

A. None.

Q. None at all?

A. At all.

Q. I see you included gas appliances rented here.

A. Yes.

Q. At what price did you withdraw your meters when you withdrew them; how did you treat those?

A. I believe the practice of withdrawing at consolidation prices has been in vogue.

Q. The practice of what?

A. Withdrawing at consolidation prices, as we term them.

Q. At what sums have you withdrawn meters? You have a column here "Withdrawal." What did you use?

The Master: I will not allow the question. The witness has stated that he took the withdrawals as they appeared on the books. It is an extract from the books, and other witnesses have 43946
been very exhaustively examined as to the basis on which withdrawals of meters were made. I will not allow the question.

Mr. Chambers: Exception.

Q. You checked those withdrawals with what figures?

A. With the books that I have named.

Q. Did you do any of that?

A. Checking it? Yes.

Q. Take the one here in 1912, the $79,135.55 withdrawal. Do you know when those meters were withdrawn, what year?

A. In that year. 43947

Q. When did they cease to be used, have you any idea?

A. Not long before that.

Q. What do you mean by not long, a year or so before?

A. No, I should think not.

Q. What do you base that on?

A. What?

Q. That they might not have been discarded or not used for a year or two before they appear withdrawn here?

A. Because as these meters come into the meter shop and are examined a determination is reached as to whether they shall be repaired or shall be condemned, and if they are condemned they are reported withdrawn.

Q. You do not know how long they take to make up their minds in the meter shop, do you?

A. They make it up pretty quickly, because they want the space there that the meters occupy.

The Master: By "pretty quickly" you mean a few months or a few days or what?

43946

The Witness: Oh, no, within a matter of a few months, perhaps a few weeks—even days.

Q. Who is the head of the meter shop that has charge of that?

A. A gentleman by the name of Cornine. The meter repair shop, of course, as you are aware, is operated by the Standard Gas Light Company.

Q. And they report to the Consolidated, do they, the meters that they think should be withdrawn?

Mr. Goetz: I object to that. The reports have already been put in evidence again and again here, the subject has been gone over again and again. We have had these meter shop reports here put in evidence.

43950

The Master: Objection overruled. What is the practice, Mr. Carter; do the meters go to the Standard repair shop and do they report what meters ought not to be repaired?

The Witness: Yes, sir.

Q. Does the item on your summary here, Exhibit 496, for cocks and connections, $359,322.12, represent the cost of the cocks and connections, or what do you claim it represents?

A. Yes, it represents the cost.

Q. There has been no writing off of that—of any amount from the cost; is that correct?

A. No.

Q. Is that true of furniture and fixtures?

A. Yes, I think—

Q. Did you answer about furniture and fixtures?

The Master: Not yet.

A. I think furniture and fixtures were written off rather liberally during most of this period.

Q. What did you say, written off liberally?

A. Rather liberally.

Q. What do you mean by that? 43952

A. Well, the withdrawals indicate that.

Q. Do you mean there is any percentage there that you wrote off, of furniture and fixtures?

A. My impression is, yes, that for a while that was the practice, to write off the percentage as representing the cost of renewing that property.

Q. Then the $532,437.54 is not what the title says, the cost of furniture and fixtures, is it, as of December 31st, 1918—the furniture and fixtures in use on December 31st, 1918?

A. I think not in respect of furniture and fixtures. We do not consider that very valuable, or a permanent asset.

43953

Q. How much of a percentage have you written off; could you say?

A. No, I could not say.

Q. As much as five?

A. I know what it is, or I knew at the time what it was, of course.

Q. Would you say it was as much as five per cent or more?

A. I would like Mr. Teele's exhibit for furniture and fixtures (taking exhibit). I think the amount written off was ten per cent semi-annually.

By the Master:

Q. Semi-annually?

A. Semi-annually.

Q. For how long?

A. Well, I think that was done until 1914.

By Mr. Chambers:

Q. You could not give me the amount in dollars, could you?

A. No.

Q. Take automobiles and accessories on this same summary exhibit, the cost. That $137,412.82, that
43955 is not the cost to the company, is it, of the automobiles and accessories in use on December 31st, 1918?

A. What schedule is that? I am not sure that it is in this one I have.

Q. You mean the one I am asking you about?

A. Yes.

Q. It is the summary, Exhibit 496; it is not the schedule.

The Master: It is the last sheet of exhibit what?

Mr. Chambers: Exhibit 474.

The Master: Is that Schedule C?

43956 Mr. Chambers: It is Schedule D.

A. I guess it has been omitted from mine (paper handed witness). I have it here.

The Master: What is the question?

Q. I say take the item of automobiles and accessories, $137,412.82, and I ask you if that represents the cost that you claim—if that represents the amount you claim it cost the company for automobiles and accessories in use on December 31st, 1918?

A. I think that that probably would represent—that balance of $137,000 would represent about the cost of the automobiles.

Q. What I mean is, you wrote that down, didn't you?

A. We did. We wrote that down instead of writing them down as they were taken out of service.

Q. How much did you write?

A. Ten per cent semi-annually.

Q. You mean you wrote off automobiles and accessories ten per cent, or twenty per cent a year?

The Master: Ten per cent semi-annually is not twenty per cent a year.

Mr. Goetz: It is ten per cent of the balance.

A. We look upon that sort of property as the 43958
working man—

The Master: Just answer the question. You wrote it off at ten per cent semi-annually?

The Witness: Yes, sir.

Q. That does not conform with the title, then?

The Master: Let us get this straight, Mr. Teele, who is within hearing distance, I hear say that is not so. Let us see what is the fact.

Mr. Chambers: We will cross-examine Mr. Teele at a later date.

A. That was the case, I should say, up to 1914, the same as in the case of furniture and fixtures. It was discontinued after that date, after 1914. 43959

Q. That is, you wrote it down at that rate until 1914?

A. Yes.

Q. How did you treat it after 1914?

A. Then we charged off the appliances themselves as they are withdrawn from service. In other words, I think that what we charged off on that percentage basis about amounted to what would have been credited to the account by taking the actual withdrawals. It was just a method that we did not like, and we abandoned it.

The Master: Since the 1st of January, 1915, you are using the procedure of actual withdrawals?

The Witness: Yes, sir.

Q. Did that same procedure apply to horses, wagons, and harness?

A. Yes, and tools and implements, and one or two other items.

Q. How about scows?

A. The same is true of scows.

Q. How about gas appliances rented, the next item?

43961 A. The same up to that time in respect to gas appliances rented. I am not sure even if it was not at a higher figure. I do not recall at the moment what it was, but we abandoned that practice and substituted actual withdrawals instead of estimated withdrawals, as that was intended to be, that method of taking off the percentage.

Q. The item of working capital in this summary, that is your own, is it not; that is the one you testified to?

A. Yes.

Q. If you are wrong about that, then this item comes out?

43962 The Master: That sounds so to me. It explains itself.

Q. Franchises and rights you took from the United States?

Mr. Goetz: We did not take it from the United States.

Mr. Chambers: 212 U. S. 19, you say.

Mr. Goetz: We did not take it from there

Mr. Ransom: The Supreme Court took it from the books.

The Master: Do not waste any time on it, Mr. Chambers.

Q. Will you take Schedule E, Mr. Carter. You have this Schedule E, have you?

Mr. Ransom: Schedule E is Exhibit 475.

A. I have.

Q. Exhibit 475. The first station is the 14th Street station?

A. Yes.

Q. Your first item there, Block 989, Lot 26, you set forth as "Condemned by City, Rowland Appraisal," Lot Nos. 1779-1787, 3108-3111, part of 3112, 3424-3427, and part of 3423, $125,060. How did you determine the cost of that part of Lot No. 3112; 43964
how did you apportion that? First of all Rowland's was in a—

A. You mean the fraction of Lot 3112?

Q. Yes, how did you apportion the part that you included in this with the part that you did not include, of that lot?

A. Well, the area took in Lots 3108 to 3111. That was four lots, north side of 15th Street, at $7,000, and 3 25ths of Lot 3112.

Q. Where did you get the 3 25ths.

A. Three feet, the lot being a 25 foot lot.

Q. You have only included three feet of it?

A. Only three feet of it. 43965

Q. You did that on an area basis?

A. Yes, sir.

Q. So you took 3 25ths of what sum?

A. $7,000.

Q. Where did you get the $7,000?

A. Rowland's appraisal.

Q. He did not appraise that?

A. I mean we call that the Rowland appraisal; it is the schedule of real estate of the Manhattan Gas Light Company, 14th Street station.

Q. I find it right here, do I not, on page 826 down at the bottom?

A. I think so, yes.

Q. There is where you got it?

A. Yes, I think that is right.

Q. And in this schedule he says Lots 3108 to 3111, $7,000?

A. Yes.

Q. You took that plot at $7,000, and then you apportioned it on an area basis?

A. Yes.

43967 Q. You said Rowland did not appraise that real estate there, but you found it in his schedule?

Mr. Ransom: He did not say that.

A. I did not say that. I do not know much about it.

Q. You got it in the schedule?

A. He has got it in the schedule known as the Rowland appraisal, and it has always been thought of as such.

Q. You thought that was a fair way of apportioning that three feet?

A. Yes.

Q. How did you apportion the next one there, Lot
43968 3423, right in the same item?

A. Well, those lots were valued by Rowland, as you are aware, at $6,000, and 3424 to 3427, inclusive, four lots, south side of East 16th Street, were taken at the $6,000, and 3 25ths of Lot 3423, taken at the same price per lot.

Q. You have not told me how much of Lot 3423 you took?

A. 3 25ths, the same as Lot 3112.

Q. That was on an area basis?

A. Yes, sir.

Q. Whose idea was it to apportion those two lots in that way, on area; is that your own?

A. No, that is not my own, but I think well of it and have adopted it.

Q. Here is another at that same station, Lots 3413 and 3423, Block 989. Those two you say you apportioned; how did you apportion those two?

A. 3423?

Q. Yes, 3423 and 3413 appear to be apportioned on this Schedule E. It is the last item there of $130,000. Those are included at $6,000 in this schedule, and I want to find out how you apportioned those two—how you did it and the basis of it.

A. I don't think I have all the detail of that here. 43970
The lots 3112 a part 3113 to 3121, 3122 a part, 3413 a part, 3414 to 3422, and 3423 a part, making a total of $130,000. I have not the detail here.

Q. There are four of them that you apportioned; you only used part of a lot?

A. Yes.

Q. And you cannot tell me how much of the lot you used?

A. I have not the detail of that.

Q. Nor how you did it?

A. I have not the detail of it.

Q. Is there anybody can tell?

A. That is all at the office, and if you send some- 43971
body there we will go over it in detail with him.

Mr. Goetz: It is also in evidence. It shows the part the City took.

Q. You have not got your working papers here on that.

A. No.

Q. Is it your recollection it was apportioned on area?

A. On area, I believe.

Q. Turn over to the page 2 of this same Schedule E, 44th Street station. You have apportioned Block

1092, Lot 7, and Block 1093, Lot 9. Can you give me any idea how you apportioned those?

A. (Consulting Exhibit 185.) I think I would have to have the working papers that were used in making that up, in order to give that detail.

By the Master:

Q. Was it generally on area?

A. Generally on area; yes, sir.

Q. Division of area?

A. Yes, sir.

Mr. Chambers: Based on the area?

43973 The Master: Area percentage.

The Witness: Based on area and upon the 1884 appraisal.

Q. That is, you took the 1884 schedule of real estate for that station, as found attached to the Rowland report, and then apportioned the prices?

A. Yes.

Q. There are many others here. Can you tell me how you apportioned any of them?

A. Why, I think most of them are as shown by the Rowland appraisal. Take the next one, 111th Street, Block 1683, Lots 33 and 34.

The Master: No, where you cut up lots.

43974 Q. Have you always apportioned them on area, or did you use some other method?

A. Always on area.

Q. Who did that work; did you do it or somebody else?

A. I had it done by my staff.

Q. That same staff?

A. The individual same staff worked on it. Mr. Allrich more particularly.

Q. Turn over to page 3; you have got a number here I want to ask you about, but maybe this one will illustrate it. The year 1893, Block 1099, apportion-

ment of grading, and so forth, West 132nd Street and 12th Avenue. How did you apportion that grading?

A. On an area basis.

Q. Area?

A. Yes.

Q. Do you think that is a fair way of doing that?

A. Yes, we thought so.

Q. Can you tell me how you apportioned that, or what you used, or anything about the details?

By the Master:

Q. What was that apportioned between? That 43976
is the holder station up there, is it not?

A. Yes, sir, the holder station.

Q. That is the holder station?

A. The holder station.

Q. What did you do, apportion this assessment?

A. It was done just on the area, on the frontage.

Q. On a part of the property that you have up there?

A. Divided it between the part we sold and the part we retained.

Q. I see you sold part of it up there?

A. We sold a part of it to the cab company, sir. 43977

By Mr. Chambers:

Q. I see here at 111th Street you apportion sewer improvements and opening of Lexington Avenue and paving. Did you apportion those on areas, on 111th Street?

A. Yes.

Q. Take the sewer improvement, was that apportioned on area?

A. That $691.92?

Q. Yes.

A. It was apportioned one-half to Block 1704 and

one-half to Block 1705. That land was later condemned by the City and taken for Little Italy Park.

Q. I know, but I was trying to get the basis of how you apportioned the sewer improvement?

A. That was the basis of it.

Q. Well, the sewer improvement might have related to or might have benefited the part of the lot that you included, might it not? How did you know what portion of the lot that sewer improvement related to?

A. Well, that was our conclusion in the matter,
43979 that that was a proper way of apportioning that $694.92.

Q. In other words, you do not know of any other way to apportion, do you, a street assessment or sewer improvement, where you divide up a lot?

A. Well, there might be; there might be other considerations.

Q. You did not take any other considerations?

A. We did not in that particular case. That was the basis.

Q. You did not think of any other way to get the apportionment, did you?

A. That would depend upon circumstances.

43980 Mr. Chambers: Will the Master say now to Mr. Carter what he said to Mr. Maltbie about using that method? Does that apply?

The Master: Any rule that I lay down applies to everybody.

Mr. Chambers: Here is the complainant doing it in the way that you condemned.

The Master: That answers it.

Mr. Ransom: He has not done the same thing.

The Master: More or less he has, yes. I do not think it is any more accurate because Mr. Carter does it than because the defendants do it.

Mr. Ransom: Neither do I.

Mr. Chambers: I will go farther, if I have not shown that he apportioned improvements on area.

The Master: Yes, you have shown that. There is no question about that. That does not change my view about it.

Q. Then I call your attention to page 4, without going into the details. Could you pick out any of those apportionments you made? There is one for 63rd Street, for sewer improvement, for grading, for receiving basins, sewer, Boulevard, street opening. I 43982
will let you pick out—can you pick out any one on page 4 and give me the details?

The Master: Where it was divided other than by area.

Mr. Chambers: By any other basis than area.

Mr. Ransom: Mr. Chambers is confusing the division on area on improvements and division on front footage.

Mr. Chambers: Mr. Chambers is not confusing anything. I am asking questions and receiving Mr. Carter's answers. That is the affair I am now engaged in.

A. Well, there is an item, Sewer, Manhattan 43983
Street and Twelfth Avenue, Block 1909.

Q. What page is that?

A. It is 130th Street sewer. It is right on the page there, 1895.

The Master: Page 4, I think.

The Witness: Page 4.

Q. Yes, I have it. Block 1909, apportionment of sewer.

A. Apportionment of sewer improvement West 132nd Street, Twelfth Avenue to the Boulevard.

Q. What did you say about it, Mr. Carter?

A. Apportioned 250 675ths to the gas, the part retained, and 425 675ths non-gas, on a basis of 132nd Street frontage, of 675 feet between the holder station and land sold in 1917.

Q. Did I understand you apportioned that on the basis of frontage, you say?

A. That was apportioned on the basis of frontage.

Q. Feet front?

A. Feet front.

Q. That is a little different method than the area,
43985 of course, isn't it?

A. Yes.

Q. Whose idea was that, Mr. Carter, your own?

A. I approved it.

Q. And you think that that was all right, too?

A. Yes.

Q. You have not been consistent, Mr. Carter, in making these apportionments. How do you explain that?

A. Well, that is your opinion.

Q. Do you think that is consistent on area and—

The Master: We will not get into an argument about it. You have brought out what Mr.
43986 Carter has done, or what the company has done.

Q. Is there any other method, Mr. Carter, that you can pick out; or I might ask you, have you any reason why you did not apportion that Block 1980 for that sewer improvement on area? Is there any reason for it?

The Master: What was your reason for doing it on front footage, do you recall, Mr. Carter?

A. Only that it was deemed that was a correct and sound basis so far as that particular improvement was concerned. In other cases area was the basis.

Q. Mr. Carter, do I correctly represent you when I say that these apportionments of sewers and improvements and street openings have to be dealt with, perhaps, each one by itself?

A. It would depend on the nature of the improvement and whether it was at the location of the property or remote.

Q. You would not say, would you, that if another person made the apportionment by some other method it might not be fair?

Mr. Ransom: I object to it as incompetent.

The Master: I will not take that; it is argu- 43988
mentative.

Q. You do the picking in all these, so I will save time. Could you pick out any other improvement or street opening, or any other kind of an assessment that you apportioned, that is different from frontage or area, where you used any other method?

A. Most of them were on the basis of the front footage.

By the Master:

Q. Was there any other method?

A. Yes, the method of area.

Q. I mean other than area and front footage, was there any other method?

A. No. 43989

By Mr. Chambers:

Q. Can you give me the details of any of them, one of them, where you used the front foot basis?

The Master: He gave you one.

Mr. Chambers: He did not give me all the details, did he?

The Master: Yes, he did. He gave you the fractions of 675 feet that he used.

Mr. Chambers: On page 4, is the figure

$609.60 in red, down at the bottom, the last item down there?

The Master: Yes, that is in red.

Q. Then, Mr. Carter, take that on page 4, that figure at the bottom, Block 2175, refund on assessment for grading Kingsbridge road, $609.60. What did you do with that which appears in red on the original; is that added or subtracted, or what?

A. It is subtracted.

Q. Do you mean it is subtracted from that column?

A. Yes.

43901 Q. And it is not included in the $48,240.11?

A. No.

Q. It is not in that?

A. No.

The Master: The total has been reduced by that amount of $609.60?

The Witness: Yes, sir.

Q. That is what I wanted to make sure of. It does not appear on this in red; it looks like all the rest.

A. That is an oversight on somebody's part.

Q. What do you mean, the failure to—

A. Encircle it.

43902 Q. Do you mean where it is in red it should be circled?

A. Yes.

Q. Is that what that circle means?

A. Yes, that is what the circle means.

Q. Suppose I circle it. Are you circling yours, Mr. Carter?

A. I am circling mine, Mr. Chambers.

Q. I will circle mine in pencil. Where did you get or dig up these items for street assessment? Do you mean from the books, or what books, or did you go to the bills? Let us take one and I will ask you

about it. Way back here in 1896 you have an item here on page 4 for grading at Kingsbridge Road: where did you get that information for that $4,000 item—$4,108.27? Where did you get that?

A. Which one are you referring to?

Q. On page 4, about the middle of the page, 1896 you will find is the year. Then it says Block 2175, grading Kingsbridge road, 190th Street to Harlem River, $4,108.27. What I want to find out is where you got that from, that figure?

A. From the books.

Q. I mean it appears right on your books in that 43994
amount, does it?

A. That was a sewer.

Q. No, it says grading, grading Kingsbridge road.

A. That was an apportionment of an assessment, $4,108.27.

Q. It does not say here that it was. Was it?

A. I think it was.

Q. It does not say anything about apportioning. But what I am trying to get at is where you got that from, that amount, and how you knew it was applied to Block 2175. I do not see whether you went to the tax bills or the assessor's office, or how the man who got this up knew that that particular amount 43995
was chargeable to that particular block in that year?

A. Well, I should have to look at the voucher to see that.

Q. What voucher would you go to?

A. The voucher for the payment of the assessment. They have been in the hands of your men for months.

Mr. Chambers: I object and move to strike that out.

The Witness: I think I would have to go to some of your people to get the voucher, probably.

Mr. Chambers: I object to that.

Mr. Ransom: I ask the Attorney General whether he denies that he had that particular voucher?

Mr. Chambers: Of course I deny it, and deny that I ever saw it.

Mr. Ransom: I mean that your men had it?

Mr. Chambers: That is another question; I would have to ask them. If they did they would say so.

Mr. Ransom: I have your representative's
43907 signed request for the vouchers yesterday.

The Master: That does not prove that they got them.

Mr. Chambers: When we come to find out you will see that the papers they said they did not have they probably did not have. They were certain particular papers.

Mr. Ransom: I now ask you to produce Mr. Mylott and Mr. Silverman this afternoon.

The Master: Do not produce any one this afternoon; Judge Mayer has a hand in this.

Q. You say you cannot tell, Mr. Carter, about that?

A. No, I cannot tell without seeing the voucher
43908 how that was determined.

Q. Can you tell me about any of the others, where you got the information?

A. From the voucher.

Q. All the information from a voucher?

A. Yes, that is my understanding.

Q. And nowhere else?

A. That is my belief.

Q. Mr. Carter, take this—what exhibit number is Schedule A?

Mr. Ransom: 471.

Q. Have you that before you, Mr. Carter?

The Master: What is that entitled?

The Witness: This is entitled, "Detailed statement of the cost of the company's real estate including improvements thereon other than manufacturing plant and holding stations."

Q. Now, this very first sheet here contains all of the property, all of the real estate from November 11, 1884 to—well, take in the next sheet. This first sheet and the second sheet take in all of the property ever owned by the Consolidated Gas Company from the time of the consolidation down to December 31, 1918—isn't that so? 44000

A. All of the land ever owned?

Q. Yes.

A. That is now owned?

Q. Ever owned, all you have ever had, isn't it all in there?

A. Yes, it is in there.

Q. Everything from 1884 down to the present time, as to those two pages?

A. That is all in there up to the time that it was sold or an award made in condemnation proceedings?

Q. But you said it is not in this Exhibit 479, all of it, the same?

A. No. 44001

Q. They are different?

A. Yes, they are different.

Q. I mean 497 will be less than—

A. 497 would be less, yes.

Q. Now, you started off, didn't you with the figures you found in the Rowland appraisal?

A. Yes.

Q. And the opening figures are these figures used on pages 1 to 21 of the opening journal?

A. Yes.

Q. The next two sheets, what did you intend to

show by those, the details of other pieces of property?

Mr. Ransom: Why, it is obviously a continuation.

A. It is a continuation of the other.

Mr. Ransom: That is, the first two sheets cover certain properties down to 1918, and then the next two sheets take certain other properties down, and the next two sheets take certain other properties.

The Witness: It takes two sheets to show
44003 from 1884 down to 1918.

Q. On the fifth sheet you have a column, "114th Street and Third Avenue." That was an office building, wasn't it?

A. Yes.

Q. And Shadyside over in New Jersey, what was that? That is not included, is it, in the property used and useful here, you don't claim that, do you?

A. No, not since 1906. It is included in these schedules up to the time that it was sold.

Mr. Ransom: 1909?

The Witness: Yes, 1909.

Q. You didn't use it, though, after 1906?

44004 A. No.

Q. Where did you get these assessments from?

A. From the books of the company.

Q. In those amounts?

Mr. Ransom: Objected to. That has been gone over in connection with the assessment item. These sheets that he is now interrogating upon are merely the summary sheets on which he was interrogated on the detail sheets.

The Master: Isn't that so, Mr. Chambers?

The Witness: Yes, that is so.

Q. Is that so?

A. Yes, that is so.

Q. Are those items, the assessments, found in the real estate account?

A. Yes, or in assessment account.

Q. In the books of the company?

A. Yes.

Q. Are you sure about that?

A. As they appear in this column?

Q. Yes.

A. In these amounts?

Q. Yes.

A. You know they are not, because you have just 44006
been examining me about the division of them.

Q. They are not found in the real estate account?

A. They are found for the full amount of the assessment, and this is the portion that is—

Q. These are the same assessments you said you got from the vouchers?

A. Yes.

Q. That is what I mean, these are the same ones?

A. Yes, these are the same ones.

Q. Consequently they are not in the real estate account in that form at least?

A. No.

Q. Now, take the details here, the 18th Street sta- 44007
tion, for example, real estate of the 18th Street station, who made this up for you?

A. The same staff.

Q. Where did they get these items from on sidewalks, and matters like that?

A. From the books of the company.

Q. Vouchers?

A. Yes.

Q. They had to dig this up, did they, out of the vouchers, most of them?

A. Yes.

44008 Robert A. Carter, Cross.

Q. How did they know that a sidewalk was for a particular piece of property?

A. When the voucher indicated it, and the account indicated it in many cases.

Q. Where the voucher did not indicate, how would they obtain what property it applied to?

A. No such cases were brought to my attention.

Q. But you don't know that there are not such?

A. I don't believe there are any.

Q. Now, take the 21st Street station, in your very first item, 1904. You have there five dwellings,
44009 $17,500. Those were between 20th and 21st Streets, Block 4?

A. Yes.

Q. What dwellings were those?

A. Tenement houses.

Q. And you have included those in the gas property here?

A. They were included in this account, because they belong there.

Q. And they run all the way through?

A. Unless they have been withdrawn.

Q. Have they been withdrawn?

A. I should say from—

44010 Q. Let us see, I don't see them.

A. Neither do I.

Q. Well, apparently they are still in?

A. I think quite likely.

Q. Who lived in those five dwelling houses, do you know, back in 1884?

Mr. Ransom: Objected to as immaterial. Counsel knows the schedule shows, we submitted a schedule showing deductions from Schedule A.

The Master: Objection sustained. What block is that?

Mr. Chambers: Block 4, between 20th and 21st Streets.

Mr. Ransom: Block 4?

Mr. Chambers: Block 4 on that exhibit.

Mr. Ransom: Yes, the old block.

The Master: How much is it?

Mr. Chambers: $17,500, five dwellings.

The Master: Carried under 21st Street station?

Mr. Chambers: Yes, real estate 21st Street station.

Q. Have you Schedule A? 44012

The Master: I was looking at Schedule E, withdrawals, that is property not to be included.

Mr. Ransom: In Schedule E, 21st Street station, Block 952, Lots 33 and 34, rented, land and improvements.

Q. I call to your attention Schedule E, the item just read by Mr. Ransom, 23,000. Is that the same as these five dwellings. Can you find those, Mr. Carter?

A. Yes. I find them in Schedule E, $23,000.

Q. Those five dwellings?

A. Lots 33 and 34. It could not be five lots.

Q. I don't mean five lots, I mean five dwellings? 44013

A. There could not be five dwellings on two lots.

Q. How many do you find?

A. Two.

Q. What has happened to the other three, can you tell? Probably it may have been Lots 31 and 32, or it might be Lots 35 and 36?

The Master: Are we sure it is Block 952?

The Witness: I would have to have the Rowland appraisal here.

Mr. Ransom: That situation has all been covered before in the testimony.

The Master: Let me see Exhibit 178.

Mr. Ransom: As I understand the situation, three of those houses were on present Lot 35, two of them were on Lots 33 and 34. They were considered as encumbrances on the land, and they were torn down to clear the land, and an exhauster house was put there. It has been occupied as an exhauster house. That was fully gone into on the direct case.

The Witness: Block 962, Lots 33 and 34, are deducted from Exhibit 471.

44015 The Master: But all of this property is included in 471.

The Witness: It is included in 471, but in our statement of land upon which we claim a return, Exhibit 475, it has been deducted, $23,000 has been deducted throughout the entire period.

The Master: For Lots 33 and 34?

The Witness: Yes.

The Master: Then there is a balance still remaining in that account?

The Witness: There is a balance still remaining which is not deducted.

The Master: Where did you get the $23,000

44016 that was deducted?

The Witness: Based on the Rowland appraisal.

The Master: He had it $17,500 for all five lots.

The Witness: I am not sure that he had that for the lots. I think that was for the dwellings on the lot, not on the lots themselves.

The Master: That may be.

Mr. Ransom: According to the testimony there was an exhauster house put on the site of three of the houses about 1887 or 1888.

The Witness: There were just those five dwellings, the lots are not included there.

The Master: Then they must be somewhere else.

The Witness: The lots are valued at $8,000 each, and the two dwellings at $17,000 makes the $23,000.

The Master: Where do you find the dwellings here?

The Witness: At the bottom of the page, the last item.

The Master: Here is what I find on page 44018
2804—

Mr. Ransom: Those pages do not conform with the official pages.

The Master: I find here Block 4, First Avenue and Avenue A, 20th and 21st Streets, Avenue A, 1347-1350—four lots $8,000 each, $32,000. Avenue A, 1346 and 1354, two corners at $9,000 each, $18,000. Then at the bottom, five dwelling houses at $3,500 each, Block 4, $17,500.

The Witness: Two lots at $8,000 and two houses at $7,000, makes the $23,000.

The Master: That corner with the three houses 44019
is still in here somewhere.

Mr. Ransom: But there has been an exhauster house on it since 1887 or 1888.

The Master: I am not discussing that. It is still in here, isn't it?

The Witness: It is still in here.

The Master: Go ahead, Mr. Chambers.

Q. How do you know that these five dwellings here on page 846 of Senate Document 47, these five dwellings at $3,500, are the same as the four lots up there at $8,000? How do you know the dwellings are on the same lot?

The Master: I won't take that, because I think from a very casual inspection of that statement in Senate Document 47, having in mind the way he has subdivided the lots under Block 4, as he calls it, and then some buildings omitted at the bottom of the page under Block 4, I think that is apparent.

Mr. Chambers: Well, Mr. Maltbie did the same thing. It bore internal evidence that the property he used was identified properly.

The Master: Go on with the next question.

44021 Q. How did you identify this property, Mr. Carter? You use Rowland's appraisal, how did you know that the property that he used was the same property that you have now, and that it was the same size, that it was not smaller in some instances, how did you know that the property did not decrease in size?

A. Shrink? Decrease in what respect?

Q. In area? How do you know that the property you are using now was not smaller in area than the property appraised by Rowland?

The Master: You mean taking for illustration the block from Avenue C to the East River, from 20th to 21st Street, or wherever that was?

44022

Mr. Chambers: Yes.

The Master: That the tide washed up over there?

Mr. Chambers: Yes.

The Master: You can answer that.

Mr. Chambers: That they did not lose some lots by erosion?

The Master: Are you able to say that the tide has not stolen some of your property?

The Witness: Nothing of that sort has transpired.

Q. How do you know that?

A. Because I have been familiar with the property in that neighborhood for a great many years.

Q. Well, you didn't survey it, you didn't have a survey of the property appraised by Rowland?

A. We identified it in the manner that I have indicated.

Q. I don't just remember what way you indicated it?

Mr. Ransom: The maps are in evidence.

The Master: Don't let us waste any time on that. 44024

Mr. Chambers: I just want to show you—

The Master: I know, you can't show me anything on that.

Mr. O'Brien: He saw it out of the seventeenth floor office window.

The Master: There is nothing to it. There is a very strong probability as to perhaps one piece that there has been accretion by filling in. There isn't a chance in the world that you can show me that any piece has become less in area because of the tide around Manhattan Island.

Mr. Ransom: In any event the maps of the Rowland appraisal are in evidence. They show 44025 exactly what there was at the time, and the defendants have had those maps.

The Master: Mr. Chambers does not serious contend that he can show any such thing, and I am not going to waste any more time on it.

Mr. Chambers: I contend that the identification is no more accurate than our identification.

The Master: No, he is talking about 1884, and Mr. Maltbie was talking about purchases as far back as 1857. Now, Mr. Carter was alive and probably kicking around in 1884, and probably can remember back to 1884.

The Witness: I worked in the 21st Street before 1884 for a while, as clerk.

Mr. Ransom: The Consolidation agreement referred to the furnishing of a map, and the map is in evidence.

Q. The 99th Street station, you included an item for legal services of $8,250.

The Master: As I read that, that is an expense incurred in condemning the property apparently.

Mr. Ransom: Acquiring.

The Master: Or acquiring the property.

44027 Mr. Chambers: No, they paid $27,500 to the City, apparently, to clear the title, and then they paid lawyers' fees of $8,250 in connection with it.

The Witness: We may have saved money at that.

Q. What do you know about that $8,250 if anything?

A. No more than that.

Q. That is what it was, they brought an action to quiet the title, or remove a cloud, or what?

A. I don't recall the circumstances.

Q. Do you remember who the lawyer was?

A. No, I do not.

44028 Mr. Ransom: I will tell you if you want to know. It was David McClure.

Q. So, instead of putting that under legal services or operating expenses you have included it as a charge to the real property?

A. Yes, that is what it cost us to get the property.

Q. Is that what you do always whenever you have legal services in connection with real property, do you add it into the cost of the real estate?

A. We are usually able to acquire it without legal services.

44029

The Master: Where you have a title examination do you charge it into the cost of the property?

The Witness: Any legal expense in connection with it becomes a charge to the property.

Mr. Chambers: Do you think that is a good practice?

The Master: Yes, I think it is proper, a proper charge against the cost of acquiring the property.

Mr. Ransom: The Commission requires it.

Mr. Chambers: This was not the cost of acquiring it.

44030

Mr. Ransom: Of course it was.

The Master: If a man buys a house he has to have the title searched by a lawyer or a title company, and I think it is part of the expense of acquiring it.

Mr. Ransom: The Commission so prescribes.

Q. Now, Hester and Elizabeth Street, have you that?

The Master: What about it?

Q. You started out with your opening amount there at $100,000 for 6 lots, didn't you, 100 by 150, including office and shop?

A. Yes.

44031

The Master: Well, that is what it shows. What is the question?

Mr. Chambers: That is not what counsel claimed it was. There was something said about $160,000, instead of $100,000.

Q. It is $100,000, isn't it?

The Master: The paper shows for itself.

Q. Well, I would like to ask if that includes office and shop and the six lots altogether; it looks that way, $100,000, isn't that right?

A. Yes. Of course additions were made subsequently.

44032 Robert A. Carter, Cross.

The Master: But it was $100,000?

The Witness: $100,000 in 1884.

Q. Turn to the general office building, 24 to 140 East 15th Street—you have an item there, "Extraordinary expense in connection with the construction of the General Office Building, charged to renewals and contingency, $488,378.80." What is that?

A. That was an additional cost of construction involved in the fact that we had already erected a twelve-story building there and were occuping it, and this building was built around it, practically, and over it,
44033 and the floors above it were suspended from beams or iron girders, whatever they may be called, and the engineer department estimated that the additional cost due to that circumstance amounted to $488,378.80, and it was charged out of the real estate account.

Q. Why? I can't see why you charged that to renewals and contingencies?

The Master: What are you complaining about? It reduces the investment, doesn't it?

Mr. O'Brien: It ought to be twice as much.

Mr. Ransom: That shows how economical the work was done then, according to Mr. O'Brien.

Q. We have here an item, 201st Street property.

44034 The Master: What is it?

Q. 1910, cost of land, between 201st Street, Academy Street and Harlem River, together with carrying charges billed by New York Edison Company, $749,908.18.

The Master: Is that part of the property that the company now claims as part of their rate base?

Mr. Ransom: No.

The Master: I am asking Mr. Chambers.

Mr. Chambers: I think not.

The Master: Then don't waste any time about it.

Mr. Chambers: I want to ask him if they turned that property over to the New York Edison Company at actual cost.

The Master: I will not allow the question, I am not interested.

Mr. Chambers: What is it in here then for?

The Master: I don't care what it is in there for. Let us get to something we are interested in.

Mr. Chambers: Exception.

Q. Mr. Carter, in regard to the Kingsbridge holder property, have you that page? 44036

The Master: What is your question?

Q. You have a credit, "Award from the City of New York for the widening of Sedgwick Avenue, $15,718." You deducted that did you not from the purchase price?

The Master: It is credited to the account. Now, what is the point?

Q. And another award for $13,752.10.

The Master: Doesn't that appear on the schedule?

Mr. Chambers: Those two are credits.

The Master: Well, what is the point?

Mr. Chambers: I want to ask him if he deducted that from the purchase price. 44037

The Master: Well, figure it out.

Mr. Chambers: When they finally put in this Exhibit 497.

The Master: Figure it out and see.

The Witness: You can find it by examining the tables that constitute the first three or four pages of this exhibit, just how it is treated there.

The Master: This has got to stop, Mr. Chambers, let us get to something that you have in

mind that you want to bring out, don't go fishing around.

Mr. Chambers: I just want to show that they did the same thing that Mr. Maltbie did.

The Master: Don't show it to me now. Show it to me later on.

Q. Mr. Carter, how hard have you tried to sell the Sedgwick Avenue property, part of it?

The Master: Well, I would not waste time on that. The company has not done more than tell some real estate agents, you can assume that.

14039 Q. Have you fixed a price on that part of it that you want to sell?

A. No; we have been told about what we could get for it probably at auction.

Q. At auction?

A. Yes.

Q. How much did they say you could get for it at auction?

A. The sum of $39,000 was named, if my memory serves me, as about what it might bring, but there were some things said about the transaction even then that would not commend it to me.

Q. You only need enough land there to take care of
14040 the holders, don't you?

The Master: Why go into that, when Mr. Carter has already said they wanted to sell everything north of the holder?

Mr. Chambers: You remember the other day he was pretty indefinite as to how near to the holder they wanted to go.

The Master: Well, he will be just as indefinite now. Go ahead with something else.

Q. Do you want to be understood, Mr. Carter, as saying to the Court that you want the Court to allow

something for working capital because of the credits of the Consolidated Gas Company?

The Master: I won't take any more on working capital.

Mr. Chambers: You are not going to let me cross-examine him?

The Master: I won't take any more on it.

Mr. Chambers: You say you won't take any more—we have not had a chance at him.

The Master: Oh, you cross-examined to your heart's content.

Mr. Chambers: Not since he is called in rebut- 44042
tal. I have not asked him one question about working capital since they opened up the case in rebuttal.

The Master: Well, I think it is sufficiently covered. My ruling is that it is sufficiently covered.

Mr. Chambers: Exception. Then, if you won't let me cross-examine on that item, that is the end of it. I did want to ask some questions. That means you won't let me ask him anything about that $430,000 odd balance on the 80 cents?

The Master: No.

Mr. Chambers: Exception. 44043

Q. Do you want the Court to understand that you are trying in every possible way to increase the sales of gas?

The Master: During the summer?

Mr. Chambers: At any time.

A. More particularly during the summer.

Q. That is, you want the company to sell more gas?

A. We haven't any choice in the matter so far as the winter demand is concerned, we have got to meet it whether we want it or not.

Q. That is not what I am asking you. I am asking you if you are anxious to increase the sales of gas.

A. We would prefer not to increase it that way. The maximum day's demand has exceeded the sales over 100% in the matter of increase.

The Master: No, don't let us get afield here. You are not anxious to increase your winter sales, is that the idea?

The Witness: No, we are not, your Honor.

Q. But you are anxious to increase—why do you keep advertising then in the winter through "Gas
44045 Logic" and other mediums? Why don't you cut out this Utilization Department except in the summer, if that is the fact?

Mr. Ransom: I object to that as absurd.

The Master: I will allow Mr. Carter to answer it and then I am going to shut it off.

A. The Utilization Department is busy summer and winter, and their principal objective is the securing of business that is all-the-year-round business, which we are very glad to get, and summer business, which we are particularly anxious to get.

The Master: If they shut down all winter are you going to have any result?

44046 The Witness: None whatever, we would lose our organization.

The Master: You have to work in the winter to get people interested for summer business?

The Witness: Absolutely, architects and builders and—

Mr. Chambers: That is pretty far fetched.

The Master: It is not far fetched. You cannot run a utilization department a few months or weeks and then shut it off and discharge your people. You can't keep up interest unless you keep plugging all the time. I know some articles

44047

where people have thought they could stop advertising and save their advertising bills, and when they stopped the advertising the sales dropped off.

Mr. O'Brien: They have not pointed out any house that has been piped as a result of that.

The Master: That is argument.

Mr. O'Brien: Your Honor has just announced a conviction on that subject. You have indicated that there is no use asking the witness any questions about this utilization department, that they need it in the summer and winter.

The Master: Yes.

Mr. O'Brien: Well, I disagree with your find- 44048
ing on that point.

The Master: All right, the place to disagree is by reviewing my findings.

Mr. Chambers: I am not ready to go on any further. I would like a little time to study up his direct-examination, a couple of hours.

The Master: Mr. O'Brien, have you anything else? At the very outset, I shall rule that so far as Schedules A to F are concerned the examination has been so exhaustive that I will not allow any more by other counsel.

Mr. Clark: I have some questions to ask about those.

44049

The Master: I am not going to allow any more. I think it is sufficiently covered.

Mr. Chambers: The testimony in regard to Mr. Little, and all that, I have not touched.

The Master: I am talking about Schedules A to F. I am not going over that again.

Mr. O'Brien: That means, I suppose, that I had better not start?

The Master: That is why I am saying it now. Mr. Chambers has exhaustively covered those schedules and I am not going to permit it all to be gone over again.

Mr. Chambers: I don't feel that I have.

The Master: I do.

Mr. O'Brien: Then your Honor's ruling is that I can not answer the witness as to anything on Plaintiff's Exhibits 471, 472, 473, 474, 475 and 476?

Mr. Chambers: I would like to say on the record that Major Clark and other counsel had questions to ask about these exhibits that are entirely different from mine, and I tried not to cover the points that they were to bring out.

44051 The Master: We will test that in a minute. Mr. O'Brien, go on and ask a question. I withdraw my ruling for the time being. Mr. Chambers says he omitted some items that you wanted to cover. Now cover it.

Mr. Chambers: I didn't mean Mr. O'Brien so much. I checked up with Major Clark, to be frank about it.

The Master: Go ahead.

By Mr. O'Brien:

Q. Mr. Carter, since you were on the stand testifying about the books of the companies, the old companies, the constituent companies of the complainant,

44052 have the books turned up?

Mr. Ransom: I object to that as not cross-examination.

A. No.

Q. Have you continued your search for them?

The Master: Objection sustained. The witness answered the last question before I could rule on it.

Q. What part did you personally take in getting up these Exhibits 471, 472, 473, 474, 475 and 476?

The Master: That matter has been covered by Mr. Chambers.

Mr. Ransom: In Mr. O'Brien's absence.

Mr. O'Brien: This is preliminary to a few questions I am going to ask in my own way as to what work Mr. Carter did. I am not satisfied with what he said about checking it up.

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. What part did Mr. Teele and his staff play in the preparation of the exhibits?

The Master: The question is not allowed. The preparation of these exhibits has been fully covered by Mr. Chambers. 44054

Mr. O'Brien: Exception.

Q. How much money was paid during the year 1919, up to August 31st, to Patterson, Teele & Denis, for work on those exhibits I have just named?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Why was it arranged that you should testify as to these various exhibits and not Mr. Brundage, the head of the accounting division?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Was this work conducted by Mr. Brundage, 44055
were the figures and the calculations made by him and men under him?

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. O'Brien: Well, your Honor, I assume you will make the same rulings with regards to all questions on these exhibits. I will not pursue any further questions if you are going to rule.

The Master: I am usually consistent in my rulings, and anything in the same line will be ruled on in the same way.

Mr. O'Brien: I don't understand why, after having made the ruling that I would not be permitted to ask questions about these exhibits, you withdrew it on a statement made by Mr. Chambers.

The Master: Because I wanted to see if there was anything new you had. So far I have not seen anything.

Mr. O'Brien: I have endeavored to examine Mr. Carter in regard to these things, but if you are going to make the same ruling I will not go
44057 ahead.

The Master: If you have anything that has not been covered by Mr. Chambers I will let you ask it. These matters you have touched on have been covered by Mr. Chambers and I will not let you ask them.

Q. As to the period between 1884 and 1905 were any books used besides the ledgers for the purpose of collating these figures?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What records and data other than the ledgers?

The Master: Same ruling.

44058 Mr. O'Brien: Exception.

Q. Did the checking process of reviewing these figures involve also the underlying data?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What underlying books or records as to the period from 1884 to 1905 have been preserved by the company?

The Master: Same ruling.

Mr. O'Brien: Exception.

The Master: Mr. Chambers, I can see no reason why this procedure can't continue while you are in conference.

Mr. Chambers: Judge Mayer asked me about that and I told him I wanted to be here for the balance of the trial.

The Master: I understand that, but I am inclined to think at this time that I shall disregard Judge Mayer's request, because he does not understand that you are through with your cross and have no interest in the procedure that is now going on. 44060

Mr. Chambers: Yes, he asked me if I would be willing to have the conference while the case was going on, and I explained very carefully to him that I did not want to be absent from the trial at this stage of the proceedings, that I did not want to be absent a minute. Counsel has said here once that I have been absent from the trial. That is not the fact. I have never been absent from the trial except one afternoon from four to six with your permission, and another Saturday.

The Master: Mr. O'Brien, please proceed.

Q. Mr. Carter, in the entries that have been made here from 1884 to 1905, or in these figures that have been tabulated here, may we assume that in each instance overheads have been included in the figures? 44061

The Master: The question is not allowed. It has been covered.

Mr. O'Brien: Exception.

Q. Where would we go to get the original entries as to such overheads?

The Master: The question is not allowed. It is already covered.

Mr. O'Brien: Exception.

14662

The Master: Have you any item in all these schedules Mr. O'Brien, that you want to call to my attention as Mr. Chambers did?

Mr. O'Brien: My examination, your Honor, will of necessity cover matters that have been brought out by Mr. Chambers, similar matters.

The Master: What I would like to know is this: Is there a single item that you want to bring to my attention by inquiry of the witness, in the form that Mr. Chambers did.

Mr. O'Brien: If I had my way in this examination, without rulings of your Honor, I would

14663 bring out from the witness just where these figures came from into the books, where the underlying data is.

The Master: Have you a single item that you attack as Mr. Chambers did?

Mr. O'Brien: You want me to do what you said we would have to do back in November?

The Master: Will the stenographer please read that inquiry?

(The stenographer reads as follows): "Have you a single item that you attack as Mr. Chambers did?"

Mr. O'Brien: I don't know what you mean by

14664 that.

The Master: Why, because you were out in the hall?

Mr. O'Brien: Well, I was not in the hall during all Mr. Chambers' examination.

The Master: All right, there won't be any further examination until that inquiry of mine is answered, as to these exhibits.

Mr. O'Brien: Your Honor can make the ruling in regard to my cross-examination. If you don't see fit to allow me to proceed along this line I will cease to ask any more questions.

The Master: I am making my ruling now.

Mr. O'Brien: I am not going to pick out any figures here and try to bring out from him that he has made an error in that figure, if that is what your Honor wants from me.

The Master: I have made my ruling.

Mr. O'Brien: I am not going to say to the witness, "Where did you get that," and undertake to prove that the calculation was wrong.

The Master: Then proceed to something else.

Mr. O'Brien: The examination goes to the method by which these exhibits were gotten up 44066
and the extent to which they went into underlying data, and the extent to which they have included in the original costs overheads and additional figures and adjustments from operating journals, or whatever it may be. That is the scope of my examination.

The Master: I won't allow any inquiries on those matters that you have indicated.

Mr. O'Brien: I note an exception, and I will not offend your Honor by proceeding further along that line.

The Master: All right, start some other line.

Mr. O'Brien: I assume that your ruling as to 44067
working capital holds good for me as for Mr. Chambers?

The Master: Yes.

Mr. O'Brien: Then I am not to be permitted to discuss with the witness working capital?

The Master: We have had enough of working capital.

Mr. O'Brien: Exception.

Q. Mr. Carter, how is the nineteen millions of dollars which represent funds of the complainant company out on loan with the affiliated companies car-

ried in the books of the complainant company? Is the account a surplus, or how is it written up in the books of the company?

Mr. Ransom: I object to that as not cross-examination, and matter not brought out in rebuttal.

The Master: Objection sustained.

Mr. O'Brien: In yesterday's examination, your Honor, the witness was allowed to explain the meaning of various accounts of the company, contingent account, depreciation account, and I
44069 maintain it is perfectly proper for me to ask the witness where that money is kept, and what fund it is in.

The Master: Objection sustained.

Mr. O'Brien: Exception. Is that because your Honor holds that it hasn't anything to do with the gas-making business, on the same theory that you excluded questions as to past earnings and investments in affiliated companies?

The Master: I don't think it will be of any use in this record, and will only take up time, to enter into a discussion with counsel. My ruling stands.

Mr. O'Brien: Exception.

44070 Q. Why did you say on page 14503 of the mimeograph record, that the account, renewals and replacements account, was in no sense a reserve?

A. I was describing an account which starts the beginning of the year without any balance in it whatever, into which is charged, or against which is charged plant and equipment withdrawn from service, and in which such withdrawals are carried until the end of the year, when they are charged against the provision for renewals and replacements which is created by the 3-cent item in the expenses.

Q. What do you understand generally by reserve account?

A. A reserve account is to be understood by the title or definition covering it.

Q. Well, if moneys are set aside for renewals and replacements, they are reserved for that purpose, are they not?

A. The provision that we make annually for renewals and replacements—

The Master: That does not answer the question.

A. (Continued.) I don't call it a reserve. It is a 44072
provision which sets up a credit account against which we charge the actual renewals of plant and equipment.

Q. You mean it is a book arrangement that hasn't any reality.

A. No, it is a provision designed to equalize in the charge against the earnings the cost of maintaining the plant and equipment in service by renewals and replacements when necessary.

Q. Well, to that extent it is a reserve, isn't it? It is moneys that are set aside for a specific purpose?

A. If there was a small balance, a credit balance is there at any time—and there might be a debit balance in there at any time—you might call the credit balance 44073
a reserve. I don't know what you would call the debit balance. It is rather a suspense account than anything else.

Q. That is the best answer you can give to my question as to why you said it was in no sense a reserve?

A. If it appeared on the credit side of the balance sheet as a credit balance representing a provision for renewals and replacements of properties, we would consider it as a segregation of the surplus account.

The Master: We will take a recess until 4 o'clock.

Recess.

Afternoon session.

ROBERT V. CARTER resumed.

CROSS-EXAMINATION BY MR. GILLIES:

Q. Mr. Carter, have you any account at the present time, or have you had during the years of 1918 and 1919, any account which is substantially a depreciation reserve?

A. Neither during that period or ever.

Q. Do you mean to be that that you have not set aside money to cover depreciation?

44073 A. The only provision, as I have stated, that I have made, has been for the maintenance of the plant and equipment of the company by renewals and replacements currently.

Q. Well, that is the nearest approach to a depreciation fund you have, is it?

Mr. Ransom: Objected to as incompetent and fully covered, argumentative.

The Master: I will sustain the objection.

Q. Will you state how much money, from 1905 to 1919, October 31st, was spent out of this renewal and replacement fund or reserve for extensions of the plant of the complainant?

44074 Mr. Ransom: Objected to as not cross-examination on any matter covered by the witness.

The Master: Oh, yes, I think it is cross-examination.

Mr. Ransom: You would not allow me to go into this thing. I tried to go into it and you would not let me.

The Master: But I was wondering whether I would not sustain it on the ground that the books tell all that story.

Mr. Ransom: They are all in evidence.

The Master: I will sustain it on that ground.

44077

Mr. O'Brien: I want to say something, but I had better not, I guess.

The Master: You have my permission.

Mr. O'Brien: Pile it up, make it a Himalaya while you are at it, your Honor.

The Master: You have my permission to say anything you want.

Mr. O'Brien: Here is a man coming here to explain the accounts of this company, they put him on as the master mind.

The Master: Yes.

Mr. O'Brien: From whom Brundage and all the others take instructions.

44078

The Master: And inspiration.

Mr. O'Brien: He is the master mind, the Major Domo of this Gas Company, he is the man with the vision that runs back into the dusty past, can talk of 1884 as of today, can forget it just as quickly as he brings it up.

The Master: And yet—

Mr. O'Brien: Has the books he needs and can't find the books that we need, comes in here to explain all the accounts in an examination absolutely not rebuttal, for which there was not any justification as rebuttal, he undertakes to try to tell you that there is not such a thing as a surplus, there isn't such a thing as a reserve, that the only thing they do use—

44079

The Master: What is the point? What has the question as to how much was paid out of a particular fund got to do with this?

Mr. O'Brien: Everything in the world.

The Master: Well, what?

Mr. O'Brien: If they have taken a fund that was gathered together out of the consumers' pockets to take care of replacements and renewals and depreciation and they have spent it on exten-

44080

sions of the plants, that amount, whatever it may be, or is, must be deducted from the base.

The Master: Well, I don't agree with you, and I sustain the objection, that is all there is to it.

Mr. O'Brien: Well, that is the ruling of the United States Supreme Court.

The Master: All right. I do not so understand it.

Mr. O'Brien: Well, you cannot understand anything different, your Honor.

The Master: But unfortunately I do.

Mr. O'Brien: Turn to 212 N. Y., it is there in

44081 plain terms.

The Matser: But unfortunately I do.

Mr. O'Brien: Or 212 U. S.

The Master: And I rule against you. I understand your point, and I am ruling against you.

Mr. O'Brien: Well, I know, but you simply can't say that you won't look at the case.

The Master: I have read it.

Mr. O'Brien: You mean the Cumberland case, the telephone case?

The Master: Yes.

Mr. O'Brien: Well, that makes the issue flat-footed, then.

44082 The Master: Why, sure.

Mr. O'Brien: Only as Judge Ransom complained in the early part of this case, the Master shows an utter disregard—he used harsher terms.

The Master: Disrespect, I think he said.

Mr. O'Brien: For decisions of courts and judges; and he also tabooed me at the time because of my reference to a senile Master who sat in a western case.

The Master: Well, I hope nobody accuses me of being senile anyway.

Mr. Ransom: An effort to kill time the rest of

44083

the day, as they have done all during the morning.

Mr. O'Brien: We are saving time, we are making a clean-cut issue, there have been four rulings made today that are clean-cut, and they have saved four days of examination.

The Master: Well, let's have another line now.

Mr. O'Brien: Taking an exception to the Master's ruling on the last question. You see, I think it was the Master who asked the question about depreciation fund, on page 14501.

The Master: Let us see that page.

Mr. O'Brien (continuing): "Q. Then, I will allow the question. Did you carry any depreciation account?" 44084

The Master: That is all right. That is not inconsistent with what I have ruled.

Mr. O'Brien: What justification for that could there be unless you wanted to determine the amount of that fund for given periods for the purpose of deducting it from the base?

The Master: I did not take it on that theory at all.

Mr. O'Brien: Then follows the answer, "We have nothing set out in reserve designed to take care of so-called accrued or theoretical depreciation." That is only half an answer. 44085

The Master: The witness insists on that, and repeats it for you again, and if you can show the contrary from the books I will be glad to have it. There need not be any argument about it If the books show something else, show me the books.

Mr. O'Brien: Well, this is artful, but it is not quite artful enough to get over.

The Master: I did not intend to be artful.

Mr. O'Brien: I did not mean you, your Honor, I mean the company's position with regard to it.

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The Master: My attitude about it is we get nowhere with cross-examination as to what the books showed or as to what account was set up. Mr. Carter has made a statement under oath that they do not keep certain accounts in the books, which are at your disposal, and if you know of any account or any appearance of an account carried in the books contradicting Mr. Carter, all you have got to do is to call my attention to it.

Mr. O'Brien: Well, you get there to that error that has obsessed you from the early summer days, that the burden of proof is on the defendants. I have here and there brought up matters so that the record could be squarely made and that we can bring home to the complainant and its attorneys knowledge of these various legal questions, but not with any idea that we are going to assume the burden of proof, because that the law says they must prove, and one of them is to differentiate in these funds. But if they have got this money buried, if it is buried in quarters without a name, if it is spread over accounts, if it is in the books, the Court will require them to set those funds out.

44087

Mr. Ransom (interrupting): I object to this continual line of talk.

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Mr. O'Brien: The Court will require them to place the moneys that have been gathered in from year to year for a depreciation fund and account for what they have done with it.

The Master: All right, let's have another question, a new line.

Mr. O'Brien: Now, what I started to say, your Honor, was this, that if you are going to take the position now that the books are the best evidence, and I cannot ask the witness about these accounts that are in the books, then you did not take that position yesterday.

The Master: No, I am not taking that position.

Mr. O'Brien: He was asked countless questions about the books.

The Master: Then I will let you ask any question in reference to them that I think is at all useful. All I meant to intimate by what I said was that the best way to show that a man is not correct in his statement, is to pull the book out and show it to him and say, "Although mine enemy hath written a book"—

Q. Mr. Carter, isn't it a custom in the office to have a reproduction of your manufacturing records 44090
for each station in what you term an office copy?

A. In the manufacturing department is kept a—what would be practically a copy of the manufacturing record which is kept at the station, which is posted from daily slips that are sent from the station to the manufacturing department at the general office.

Q. Is it your position, then, that this so-called office copy of the manufacturing record is made up daily from slips that come in from each station?

A. That is a fact.

Q. That has been the practice of the company how long?

A. For as long as I can remember. 44091

Q. Why do they keep that book?

A. For purely statistical purposes.

Q. Do they make gas production statistics from it?

A. For whatever use the manufacturing department desires to use it.

The Master: I think Mr. O'Brien's question calls for an answer. Do they make up these statistical records from that office copy, or from the manufacturing book in the station?

The Witness: The manufacturing department makes any records or any computations it makes

for use in its work for its purposes from its copy of the manufacturing record.

The Master: From its manufacturing record?

The Witness: Yes.

Q. What are those so-called gas production statistics made up from?

A. The manufacturing record itself constitutes a production statistical record.

The Master: That is not the question. There were produced in court here some production statistic sheets. Were those the ones in lead pencil
44093 or in ink?

Mr. O'Brien: Lead pencil.

The Master: Well, the lead pencil sheets, gas production statistics, I think they were called. Now, was that made up in the office from this manufacturing book, or—

The Witness: No, sir.

The Master: How is that made up?

The Witness: Not in any sense. They are the statistical data compiled for the purpose of the general accounts, and are made up from the monthly report filed by the station superintendents. They have nothing to do with the manu-
44094 facturing record to which counsel has alluded, and are in no way dependent upon them.

Q. Don't they come from the same source of information in the works of each station?

A. You are talking about general office manufacturing records. No, nothing comes from that source. They come from the engineer—from the superintendent of the station, these monthly—

Q. Let us get you straightened out, or straighten myself out, if I am confused. You have what you term an office copy of a manufacturing record, you testified it was made up daily in the manufacturing

department from slips that come in daily bearing the information. Now, I asked you whether that copy, that office copy, is not from the same source of information as the gas production statistics which you say are made up from monthly reports of the superintendents of the stations?

A. No, I should say not.

The Master: Why not?

The Witness: Because, for example, these daily slips that are sent to the general office—

The Master: They come from the works?

The Witness: They come from the stations. 44096

The Master: They come from the works?

The Witness: They come from the works.

The Master: And the superintendents' reports come from the works?

The Witness: They do, but when those daily reports come the superintendent may not have had information upon which he bases his monthly report to the accounting department.

The Master: Well, that is not important, so far as Mr. O'Brien's question is concerned. It all comes from the works.

The Witness: It all comes from the works, if he considers the works the source.

44097

Q. What information does a man have, a superintendent of a station have, at the end of the month that he does not have daily when he is making out a daily slip?

A. He has information then as the oil deliveries by the Standard Oil Company, as measured by the Standard Oil Company, which are the basis of his monthly report to the general office accounting department, and the basis of the entries which are made in the books.

Q. He has the registered make each day. Does he turn that in in a slip to the manufacturing department?

A. Gas made?

Q. Gas made.

A. Yes.

Q. Registered and corrected make?

A. Yes.

Q. He has the gallonage of oil used, hasn't he, daily?

A. He has. Which, according to practice, is subject to adjustment to conform to the measurements of the Standard Oil Company when they are received, which may be two or three days after the oil is de-

44000 livered. In the meantime they have to get along as best they can without that information.

Q. What has the amount of oil received from the Standard Oil Company got to do with the amount of the gallonage of oil used each day?

A. Because the gallonage of oil used each day finally conforms to the measurements of oil delivered by the Standard Oil Company as made by the oil companies—the inspector or public weigher, or whatever they call him, I have forgotten his name—Produce Exchange inspector whose certificate is the basis of the bill of the Standard Oil Company, and in accordance with which and the basis upon which we make

44100 our payments to the Standard Oil Company.

The Master: Then the amount of gallonage entered into the manufacturing book each day is an estimate or a guess, isn't it?

The Witness: That has been the case, sir. That is it was not the final quantity based upon the Standard Oil measurement, which under our contract we are obliged to accept.

The Master: What is it based on daily?

The Witness: Based on, temporarily, measurements of their own.

The Master: What kind of measurements of their own?

The Witness: Such measurements as they make when the oil is delivered, because they also measure the oil as it is delivered.

Q. Well, don't you—

The Master: What doesn't appear clear at this particular point, I think it is clear at other parts of the record, but what is not particularly clear at this particular point is that, as I understand it, the station manufacturing book shows daily the amount of oil used and the quantity used per candle power, my recollection is, so many gallons. 43953

The Witness: The quantity used per thousand cubic feet made.

The Master: Now, it must be gotten somewhere. Where is it gotten? How do they get at it?

The Witness: They get at it temporarily by using their own measurement, but they have undertaken always to adjust that, we have had to adjust that quantity to the Standard Oil measurements in subsequent days.

Q. Mr. Carter, in May, 1919, where we see inscribed in a line on the manfacturing record gallonage of oil used per thousand cubic feet 3.57, doesn't that mean that they used on the particular day mentioned, for each thousand cubic feet of gas made 3.57 gallons of oil? 43952

Mr. Ransom: This is not cross-examination.

The Master: I think it is pretty hard to draw the line.

Mr. O'Brien: It is cross-examination, your Honor. Here is the page, if you want to see it.

The Master: It is pretty hard to draw the line there.

Mr. Ransom: I wanted to ask him about what the General Office kept, and you would not let me.

The Master: You opened up the situation about the General Office copy.

Mr. Ransom: Not the works copy. If your Honor thinks it is helpful, I am willing to let it go in.

The Master: I will allow it.

Mr. Ransom: Because it has all been gone over before, as to just—

44105 The Master: Well, we are going to have this argument about the works copy and the office copy not agreeing during that month that Mr. O'Brien pointed out, and we might as well have it now and find out what it is all about.

The Witness: If the clerk understands what he is about and makes his computations correctly and has kept his record correctly and his quantity used is based upon the Standard Oil measurements it is correct.

Q. What has the Standard Oil measurements got to do with the report of the gas maker daily made to the superintendent of the works as to the amount of oil

44106 that he has used during the day?

A. That is for statistical purposes.

Q. Don't mix it up, Mr. Carter. I am asking you what has the Standard Oil measurements got to do with the report made each day by the gas makers as to the amount of oil they have used?

A. The Standard Oil measurement is finally controlling.

Q. You mean that when you are inventorying over a certain period the amount of oil used, that you conform everything to what you think you got from the Standard Oil Company, don't you?

A. From what the Produce Exchange inspectors report as being delivered to us, or having been delivered to us.

Q. Well, then, is it your idea that these records made in the manufacturing report or manufacturing record, these office records, the facts recorded are only put in at the end of the month, and are adjusted figures?

A. I have not said so. The manufacturing record is made up daily.

Q. Well, you brought in the measurements of the Standard Oil Company. Now, explain it as best you 44108
can, that is all I want.

Mr. Ransom: Let him explain it, if you will listen instead of talking all the time.

Q. What has the Standard Oil measurements got to do with the daily record of oil used, is what I want you to explain.

The Master: All right, answer that, Mr. Carter.

Mr. Ransom: I think that has all been gone over many times as to just the way that is done, it has been gone over at least three times which I can recall.

The Master: Well, I will let Mr. Carter an- 44109
swer this, then I will make a statement.

The Witness: The daily records are based upon the consumption of oil as measured by the stock tank accounts. They have two measurements. They have the meter measurement of the company, and they have the tank measurements. That is the stock measurement. That is supposed to be controlling, and the amount used is adjusted to that. Now, if the clerk properly brings forward from the preceding month the quantity of oil on hand, as shown by his stock,

which happened not to be done on this occasion, this month of May—

The Master: Don't let's talk about the month of May, just now.

The Witness: And thereafter properly recorded the quantity used as determined by the stock measurements tallying with the quantity of oil received according to the station measurements, his record is a perfectly good record so far as the station measurements are concerned, but the station measurements are not finally con-
44111 trolling.

The Master: Let me see if I understand it.

Mr. O'Brien: Your Honor, I would like to handle this witness in my own way.

The Master: I want to see if I understand what the witness has said.

Mr. O'Brien: Well, perhaps you don't understand what I am saying, because I have my mind on something, and I prefer to examine the witness myself.

The Master: I can't help that.

Mr. O'Brien: Well, I take an exception to your Honor taking over the examination of the wit-
44112 ness from me at this time.

The Master: As I understand it, Mr. Carter, this is what you say, that the entry made in the manufacturing record at the works is a statement by the works clerk that according to the measurements at the works in the manner you have described, a certain quantity of oil was used during the day, representing a certain gallonage per thousand cubic feet?

The Witness: Yes, sir.

The Master: That at the end of the month the amount of oil used during the month is read-

justed in the accounting office or in the works office by the superintendent, based upon the amount of oil reported to have been delivered by the Produce Exchange inspector?

The Witness: Yes, sir.

The Master: And that that amount reported to have been delivered by the Produce Exchange inspector varies, at any rate on some occasions, from the computations in the works?

The Witness: From the works measurement of what was delivered.

The Master: Yes, that is what I said. 44114

The Witness: Exactly.

The Master: Now, that being so, the superintendent's report at the end of the month based upon the reported deliveries by the Standard Oil Company certified deliveries, will frequently vary from the works daily entry as the result of the works computation of their stock.

The Witness: Exactly. He undertakes to have his record conform to that for the month, however.

The Master: But does he change the daily entries?

The Witness: He does not change the daily 44115
entries.

The Master: Well, suppose the daily entries analyzed show that a thousand gallons of oil were used in a month, and suppose the certified report of the Produce Exchange inspector taken in connection with the balance at the beginning of the month shows 900 gallons were used during the month, which figures do you take for your statistical records?

The Witness: Before he closes his statement for the month, he has got that final information.

and the monthly statement is adjusted in accordance with the Produce Exchange measurements.

The Master: So that the monthly report would show a use of 900 gallons under my illustration, rather than a thousand?

The Witness: Exactly, as to the total quantity used during the month.

The Master: So that the statistical record will show less oil used than the works record would show, using my illustration?

The Witness: Exactly.

44117 Q. Are you ill, Mr. Carter?

A. I am not ill, no.

The Master: What else do you want to ask him?

Mr. O'Brien: Well, I want to ask him a whole lot of questions about this, your Honor.

The Master: Go ahead and ask him.

Mr. O'Brien: I do not intend to have your examination supplant mine with this witness at this point.

The Master: I did not intend that it should, but I will clear up a question in my mind.

Mr. O'Brien: I ask that the production book
44118 be produced for the 99th Street station, also the office copy.

Mr. Ransom: They are all here, if not in the room.

The Master: Well, let us have them. What is this that you are now producing?

Mr. Ransom: I now produce Defendants' Exhibit AA-445.

The Master: Being what?

Mr. Ransom: Of January 17, 1920, being the daily record of manufacture kept at the 99th Street works.

The Master: Well, now, where is the office copy?

Mr. Ransom: I think perhaps the defendants' representatives have been at work at that and still are, but we will have it back here in a minute.

The Master: What is being produced now?

Mr. Ransom: I now am producing Defendants' Exhibit AA-444 of the same date, the same being the daily record of manufacture as made up at the General Office.

The Master: Of the 99th Street station? 44120

Mr. Ransom: The so-called General Office copy.

The Master: 99th Street station?

Mr. Ransom: The 99th Street station.

Q. Now, Mr. Carter, if, as I understand it, in the examination of the Master and your answers to his questions, one of these records is subjected to adjustment at the end of the month to make the reported gallonage of oil used during the month conform to what at the end of the month is found to have been the deliveries of oil by the Standard Oil Company—

A. Yes, they both do, for that matter.

Q. Well, if that be so, how is it that for the various days of each month the corrections or adjustments of the daily amounts used is not uniform? 44121

Mr. Ransom: Objected to, as it has been definitely stated—

The Master: I will overrule the objection, because I do not understand the question.

The Witness: I do not know just exactly what Mr. O'Brien meant.

Q. Well, I will put it in my own crude way. We will say that at 99th Street during the month of May the daily reports which found their way into the

manufacturing record of the works indicate a total use of 100,000 gallons of oil?

A. During the month?

Q. During the month. That is the sum total of the month, it varying from day to day during each day, some days more, some days a little less, and at the end of the month by some records from somewhere indicating deliveries from the Standard Oil Company, it was found that a larger consumption of oil must have been had, say, 125,000 gallons; as I understand it, you undertake to adjust the figures that have been
44123 inscribed daily in the manufacturing record to conform to that increased consumption of 25,000 gallons by distributing it over the month.

Mr. Ransom: Objected to, there has been no such testimony at all.

The Witness: I did not state that, Mr. O'Brien. I said that he did not complete his monthly record until he had that information, so that he has a day or two in which he can distribute that difference.

The Master: Does he change the figures each day?

The Witness: No.

44124 The Master: Does he touch those figures?

The Witness: No, he just holds it back a day or two.

The Master: Holds what up, that whole column?

The Witness: No, only the last—only the day or two after a delivery by the Standard Oil Company.

Mr. Ransom: Before he makes up his monthly report?

The Witness: Yes.

Mr. O'Brien: Your Honor, I don't want Mr. Ransom to go into that and answer the question. You cannot give the witness an S. O. S. while I am here, without my objection.

The Master: Now, take this book, it shows here on the first of the month that 15,775 gallons were used. Do you see that?

The Witness: Yes, sir.

By the Master:

Q. When is that entry made, on the first of the month, or at the 31st of the month?

A. Upon the first of the month or the day following, the morning following, the morning of the second. 44126

Q. Does that go all the way through here?

A. It does, except at this point. Yes, it would go right ahead, except that after he—he would use temporarily, keeping a memorandum, the station measured quantity, instead of that quantity delivered according to the Produce Exchange notification.

Q. Yes.

A. And use the station measurement, but when he got that, within a day or two or three, he would transfer it, and he would make his adjustments accordingly.

Q. What adjustment, the prior day's? 44127

A. No, he would not go back, he would simply take his stock on hand, and using that, adjust the day on here.

Q. Adjust what day?

A. The next day.

Q. Well, the next day would not be accurate, would it, in comparison with the prior day's figures?

A. Would not be accurate?

Mr. O'Brien: Well, Mr. Carter, take a pencil and paper, please, and we will see this worked out in figures.

By Mr. O'Brien:

Q. Take the entry here on page for May, 1919, Defendants' Exhibit AA-445, and explain what you mean in regard to this adjustment of the figures which you have generally described now in answer to the Master's question, referring particularly to the entry made here as of the 10th of the month, 108,794 gallons received.

Mr. Ransom: I object to the question, this is not within the realm of anything possible that I examined this witness upon on rebuttal.

44129 The Master: I am going to take it.

Mr. Ransom: Even as to the one question which I endeavored to ask him with respect to the 99th Street matter, a part of my proof in that respect you would not allow me to ask even that, on the ground that he knew nothing about it at that time, and now you permit Mr. O'Brien to lead him all over the lot on the thing, not cross-examination at all.

The Master: Are you ready to answer the question, Mr. Carter?

The Witness: What I have undertaken to do is to reproduce what the station clerk would do in

44130 adjusting a variation between the station measurement and the Standard Oil measurement.

The Master: Suppose you tell us what you have done

Mr. O'Brien: May the record show that Mr. Carter was engaged for about 25 minutes—

Mr. Goetz: That is not so at all.

The Master: About 12 minutes.

Mr. Goetz: Mr. Carter had a long string of figures to calculate—

The Master: Let the record note that Mr. Carter in attempting to answer Mr. O'Brien's question—

44131

Mr. O'Brien: Was I wrong about that?

The Master: That he was about 13 minutes, he spent about 13 minutes in the calculation. Now, tell us what you did.

Mr. Goetz: Mr. Carter is not the man that does these calculations.

The Master: That is enough on this.

Mr. O'Brien: There is a question here. I don't want him to tell us what he did. I want him to answer the question. I gave him a question to answer as to this. When you stood here over the books, he undertook to tell you how these gallons received was adjusted into the figures--

44132

Mr. O'Brien: This is all over my objection. I have asked him how he--

Mr. Ransom: He doesn't do it.

Mr O'Brien: I asked him to take this entry of 108,794 gallons, how he has adjusted that, by using that figure, how he has adjusted the figures for any portion of the month in the next column.

Mr. Ransom: I object to this wandering speech by counsel.

The Master: I will hear what Mr. Carter says he did in the way of calculation just now.

The Witness: I assumed there was a variation of 100 gallons between the station measurement and the Standard Oil measurement, and that he got his notification two or three days after he had made a record of the quantity on hand and the quantity used according to that measurement, and that when he got that he adjusted it by taking that 100 gallons and adjusting it in the day that he entered, after having that certificate of the Produce Exchange—

44133

Mr. Ransom: You see, your Honor, that is the vice of your Honor's ruling.

Mr. O'Brien: There is no vice about this, this is the most illuminating thing we have had in the case.

Mr. Ransom: Wait until you get a witness who has something to do with it.

Mr. O'Brien: What is that?

Mr. Ransom: I say, wait until you get a witness who has something to do with it.

Mr. O'Brien: No, we have got the witness all right, the man, the place and the girl. We have got that. I don't know anything that could be
44135 fairer for counsel for the other side than to say to the company, "If there is an explanation for this give it to us, take your time and give it to us."

Mr. Ransom: It is explained right on its face.

Q. Mr. Carter, will you show me how this figure of 108,794 has been used for purposes of adjustments upon the figures in the next column?

A. The difficulty with that statement is that the wrong amount was brought forward from the preceding months, and the clerk, starting with that amount, adjusted his figures all through the month to that quantity brought forward. If you will look
44136 at the preceding day you will discover—I don't know whether it indicates it now, but I think it does—that on the preceding day he had a quantity—he brought forward what had been used, 482,640 gallons used in the preceding month, instead of bringing forward the quantity on hand, 220,190 gallons, and he proceeded until he got to the point where he had to prove his month with the Standard Oil measurements, and then discovered it, and in a very clumsy manner undertook to make his corrections.

Q. In other words for the previous month the figure for gallons used was 482,640, and the gallons on

hand were 220,190, and in turning over to the next month he mixed it up and put in as gallons on hand the gallons that were used?

A. Yes, sir.

Q. Subsequently he found his error and attempted to mutilate the page and inscribe in the books—

Mr. Ransom: The page is not mutilated.

A. He was an inexperienced clerk, he had only been there a month or two, he evidently had not familiarized himself with this somewhat complex problem of adjusting that difference, and it is betrayed by the page before you. There was a further com- 44138
plication—

Q. Well, now, Mr. Carter, you have given us the explanation here of a concrete readjustment, when you were testifying before you got into the big book here you understood to say that there was an adjustment made every month in the manufacturing record as the reports from the Standard Oil were received, an adjustment to make the books conform to the measurements sent to you by the Standard Oil?

Mr. Ransom: I object to that. The witness testified to no such thing.

Q. If I have not stated it correctly, Mr. Carter, you will apprise me. Isn't that substantially what you 44139
said?

A. The books were not completed—the month was not completed until after that information was available.

Q. Then is it your idea that these figures are only put in at the end of the month?

A. No, they are put in right through the month.

Q. These figures of gallons used and gallons on hand are put in daily or at the end of the month?

A. They are put in daily, and that young man furthermore complicated the situation through the use

of some oil there that was not carried in the regular stock, some oil that had been reclaimed as the result of a discovery that one of the tanks had leaked, some oil had escaped from the tank, and as the result of an excavation they were able to recover quite a quantity and put it into one of the holder tanks.

Q. Where is the evidence of that in the manufacturing record?

A. It does not show there.

Q. How did you refresh your memory on that?

A. That is my information, Mr. O'Brien. I never

44141 got down into that oil well—

Q. I know, but when did you refresh your memory on this matter?

A. I made it my business to investigate it.

Q. After we had put these books in evidence?

A. Yes, it did not come to my attention before that time. That was put in there by direction of some superintendent, some of that reclaimed oil which was contained in one of the holders and not carried in the stock account, and which he should not have included in that column of oil used without specially reporting it to the general office.

The Master: Mr. O'Brien, what is the use of

44142 sustaining objections to questions asked by Mr. Ransom to bring out information of this kind if you on cross-examination are going to bring it out?

Mr. O'Brien: What is that?

The Master: Judge Ransom asked a question to bring out this very information, I sustained the objection to it. What is the use of doing that if you ask questions to bring out the same information?

Mr. O'Brien: I do not handle the conscience of the Master.

The Master: Well, what is the use?

Mr. O'Brien: I do not want to be diverted from my purpose here, your Honor. There is more information in these few columns than in anything that is in this case.

The Master: All right, ask another question.

Mr. O'Brien: I don't know anything that is fairer than to say to a witness, "Tell us in your own way some explanation of these books."

Q. Now, you say, Mr. Carter, one minute that the entries are made as to gallons used and gallons on hand, that they are made daily, each day's on hand 44144
and each day's used is inscribed in this book. The next minute you say they are only put in at the end of the month?

A. You get a statement of the Standard Oil Company.

Mr. Ransom: I object to that.

The Master: Objection sustained on the ground that it is argumentative.

Mr. O'Brien: Now, your Honor, I am going to protest against Mr. Ransom waiving and beckoning to the witness to stop his answer.

The Master: It was perfectly proper for him to do it, because I had sustained the objection. 44145

Mr. O'Brien: I take an exception to the ruling of the Master upholding counsel for the complainant in directing the witness to stop answering a question after he had it half out.

Q. Now, I repeat the question. Mr. Carter, is it at the end of the month that these two columns are filled in, or are they filled in daily?

Mr. Ransom: I object to that, it has been gone over two or three times.

The Master: I will allow it again.

A. They are filled in daily, and as I have stated—

The Master: No, just answer questions.

A. (Continued.) Except the last day or two, in respect of which the clerk waits for the last certificate of the last shipment before completing the month and finishing up his column and completing his record.

Q. Do you keep right down to the monthly deliveries with your oil, don't you always have a lot on hand?

A. Oh, yes, sometimes less than others.

Q. Don't some months go by without any deliv-
44147 eries?

A. Oh, rarely. I think you will find oil deliveries there during the month, two or three times.

Q. Now, Mr. Carter, you have been talking about the manufacturing record at the station. Will you now give us your explanation of all the changes that have been made in this office copy, and explain, if you have an explanation, the discrepancies between the so-called office copy and the copy kept at the works, the original?

Mr. Ransom: I object to that.

The Master: This is for the month of May, 1919.

44148 Mr. Ransom: Your Honor has allowed this all over my objection. I endeavored to ask the witness certain questions as a part of my proof and your Honor would not allow it. Now, with respect to the 90th Street station book, concerning which I asked the witness no questions whatever, directly or indirectly, you have permitted counsel to interrogate him about a lot of things which he did not know fully about, and now on this thing you propose, or the question proposes, to go into a lot of matters that are in no respect cross-examination.

44149

The Master: I will take the answer.

Mr. Ransom: Exception. I think it is a very improper thing, very improper procedure.

The Master: What appeals to me is that there evidently was something wrong about the May, 1919, records, and we might as well get it now as any time, if Mr. Carter knows. If he doesn't know he can say so.

Mr Ransom: The best illustration of the company's system is that it was caught and detected.

The Master: Make your reply, Mr. O'Brien, and when that reply is in I am going to stop the discussion going on the record. I am going 44150
to direct the stenographer not to take any more.

Mr. O'Brien: My reply to Ransom is that far from being a confirmation of the company's records this is an indictment of their reliability, these records.

The Master: Now, your question to Mr. Carter is what?

Mr. O'Brien: The testimony of Mr. Woods was that it took 4.1 gallons of oil to make a thousand cubic feet of gas. These books, if they are reliable, show that it can be done with 3.57 gallons. They show that 3.57 gallons of oil will send out on the district 22 candle power gas. One 44151
or the other is rotten.

The Master: Have you anything more from Mr Carter?

Mr. O'Brien: I asked Mr. Carter a question and I renew the question.

The Master: Repeat it.

Mr. O'Brien: Will the stenographer kindly read it.

The Master: Don't you recall it?

Mr. O'Brien: It was to explain the changes, the alterations that had been made in this so-

called office copy in the records of May, 1919, in the 98th Street station manufacturing book, being Defendants' Exhibit AA-444.

Mr. Ransom: This is over my objection.

The Master: Do you know anything about it except as the result of inquiries you have made?

The Witness: That is all.

The Master: Well, I won't take it. I will make the same ruling I made on Judge Ransom, I won't take it. He doesn't know anything about
44153 it.

Mr. O'Brien: Why, he has already been testifying for an hour about it.

The Master: All right, I am going to stop it, because he has wasted an hour on it, and doesn't know anything about it.

Mr. O'Brien: I note an exception to your ruling.

Q. Mr. Carter, can you say why, when Mr. Edgerton asked for the manufacturing book of the 98th Street station, he was given this office copy that had been altered, instead of the manufacturing book itself?

44154 Mr. Ransom: I object to the inference that these books have been altered. All they have done has been to find an error and correct it.

The Master: Objection sustained.

Mr. O'Brien: I am going to photograph that and get it right into the record in this case.

The Master: Objection sustained.

Mr. O'Brien: Exception. I suppose that your Honor would rule out questions that I want to put to the witness as to the proving of these figures.

The Master: I don't know what you are going to ask.

Mr. O'Brien: I was going to ask some questions here to have this witness prove up these figures here, registered make.

The Master: No, I won't let the witness do any more calculating.

Mr. O'Brien: Taking for instance the gas made per day's labor of 198,600, with a total of 20 men working in May, 1916, and figure up the registered make as of that date and the corrected make. 44156

The Master: No, I won't let him do any calculating.

Q. Mr. Carter, can you tell us why the red lines were drawn through these two columns, gallons used and gallons on hand, in the office copy, as of May, 1919?

The Master: If you know, except what you have been told as the result of your inquiry, you can answer the question. If what you are going to tell us is simply what somebody else has told you, I don't want it.

Mr. Ransom: I object to the question anyway, because the paper shows on its face why it was done. 44157

Mr. O'Brien: Your Honor, we have been hearing Mr. Carter here on all kinds of things about what people reported to him. Make your ruling, and let us get to the finale, and let the curtain drop on this case. I have reached a point where I want to be out of it soon.

The Master: Mr. Carter, if you know anything about these red lines you can tell us, unless it has been a matter that has been told to you by others.

Mr. O'Brien: I mean these big marks here running across the columns from top to bottom, of gallons used and gallons on hand.

The Witness: I only know what the clerk himself told me about it.

Q. What clerk?

A. That drew the lines.

Q. You don't mean the clerk at the works whom you have just been criticising?

A. I mean the clerk at the General Office.

Q. Who is it?

41150 A. What is his name?

Q. Yes.

A. Rogers.

Q. He is still with you?

A. Yes.

Q. Well, did he make mistakes, too?

The Master: Objection sustained.

Q. What was the name of that inexperienced youth who made the figures in the works copy?

Mr. Ransom: I object to that as not cross-examination.

The Master: As a matter of information I will take that.

41160 A. His name has escaped my mind.

Q. Is he still in the employ of the company?

A. I understand so.

Q. Is it your position that this office copy is kept just for the information of the manufacturing department?

The Master: He has already answered that Objection sustained.

Mr. O'Brien: I have got to object to your Honor making that statement and making that ruling.

The Master: I can't help that, I am making the ruling.

Mr. O'Brien: Well, I am going to protest against it on the record, and I would like to tell you just what I am going to say about that ruling when we come before the District Court.

The Master: I can imagine what you are going to say about it.

Mr. O'Brien: It is going to be pretty severe.

The Master: I can imagine all that.

Q. How long has the company kept an office copy?

The Master: Already answered, question not 44162
allowed.

Mr. O'Brien: Exception.

Q. Is this manufacturing department under Mr. Woods?

The Master: Question not allowed. It has been covered months ago.

Mr. O'Brien: Well, I know we have been told Mr. Woods is chief of manufacture, but this is the first time I have heard of the manufacturing department as such.

Q. Is this manufacturing department a bureau in the main office presided over by some engineer?

Mr. Ransom: Objected to. 44163

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Are the reports to the Public Service Commission annually made, made from the office copy or from the copy at the works?

Mr. Ransom: Objected to. It has not anything to do with any question on which he was examined.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Were Mr. Teele's figures, so far as they in-

cluded costs of manufacture of gas at the 99th Street station, taken from the works copy or the office copy?

Mr. Ransom: Objected to. Mr. Teele told definitely what he took his figures from in great detail, and many of them are in evidence.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Was the office copy turned over to Mr. Teele during the examination of the books by his men for the purpose of making tests as to the reliability of the figures in the principal books of account?

44165 Mr. Ransom: Objected to on the same ground.

The Master: Same ruling.

Mr. O'Brien: Exception. Well, I will close this book for today, your Honor. I call your Honor's attention again, so it will be indelibly impressed on your mind, to the experiences we have had with those books. You have spoken of the many months we have had to examine them—

The Master: I don't want any more discussion. I am directing the stenographer not to take any more.

Q. Now, Mr. Carter, give me some concrete in-
44166 formation as to the work done by the utilization department in reference to summer business?

The Master: Oh, that has been sufficiently covered. I won't allow it.

Mr. O'Brien: Oh, yes, I do recall now that your Honor expressed a conviction on that subject, and I will pass on.

Q. Mr. Carter, when you answered this question put to you by Judge Ransom on page 14449 of the mimeograph record as follows:

"Q. Mr. Carter, referring to the testimony of the witness Weber and his Exhibit AA-465, I ask you this

question: If the Consolidated Gas Company disposed of all its securities and received no income except from its gas operations, would the Consolidated Gas Company have been able in 1918 or 1919 to reduce its legal expenses, its general office salaries, general office supplies and expenses, and the other miscellaneous general expenses which Dr. Weber has attempted by his Exhibit AA-465 to reduce by one-third or to omit entirely?"

The Master: Well, he never answered that question.

Mr. O'Brien: I noticed at yesterday's examination it took about five minutes to get one answer in. 44168

The Master: Because I limited the question.

Mr Ransom: And because Mr. Chambers talked so much.

Mr. Chambers: Well, the record speaks for itself. Most of the talking was by the Master. I said very little, and what I said was to the point.

Q. Am I right in assuming that in the answers you gave following that question that you took the position that if you were freed from your affiliated companies and doing your own business, the gas business, you would have just the same legal expenses? 44169

A. I stated they would be higher.

Q. Just give me the reasoning by which you came to that conclusion?

Mr. Ransom: I think that was pretty fully covered

The Master: Well, not on cross-examination. It was on direct. I cross-examined somewhat on that, but that does not satisfy Mr. O'Brien, so I will let him ask.

Q. Would you still have to pay Shearman & Sterling a fee that you did pay them, $40,000 a year?

Mr. Ransom: I object to that. There is no such proof in this case.

The Master: Well, whatever it is.

Mr. O'Brien: Well, make it more—add to it.

Mr. Ransom: $25,000.

Mr. O'Brien: Whatever the right amount is, I don't want to camouflage about it.

The Master: Do you say you would have to pay the same retainer to Shearman & Sterling if you did not have these affiliated companies?

44171 The Witness: I believe we would, because they collect their retainers from the affiliatel companies also.

Q. They would sting you?

A. I am not sure that they might not be able to make similar arrangements if we should le divorced from the others.

Q. You would give them the same amount anyhow?

A. Probably more.

Q. Because you like their work?

A. No, because we would have to in order to secure their services.

Q. With Mr. Garver on the Executive Committee,

44172 taking part in the resolutions?

The Master: That is argumentaive. You have brought all that out. I will let you cross-examine Mr. Carter as to the basis of such statements.

Q. Won't you give me a direct answer, man to man, and let me close this case up? What do they do for the $25,000 or $40,000, whatever thir retainer is? Get right down to the gas making business. What is it they do to earn that money?

Mr. Ransom: That is not cross-examination. Mr. Carter was asked this question, which has

nothing to do with what he was asked before, several months ago, and it was explained in great detail.

The Master: But you have come back on rebuttal, and you have asked Mr. Carter to testify to the fact that if all these affiliated companies were eliminated the legal expense would be the same.

Mr. Ransom: And you would not allow it.

The Master: Oh, yes, I did.

Mr. Ransom: Not in that form.

The Master: You started out with the question of security, and I followed it up and said, "If all the companies were dropped"—you limited it to securities—and I wanted to make clear that what you really meant was the Consolidated Gas Company conducting its own gas business. I gathered from your question what the purpose of it was, and I am going to allow this cross-examination within reasonable limits. Go ahead. The question is, what are the legal services of Shearman & Sterling for which you pay them $25,000 a year? 44174

The Witness: Such legal expense as a corporation like the Consolidated Gas Company requires. 44175

Q. Why, you don't have to sue anybody, do you, to collect your bills?

A. We frequently do.

The Master: Well that is a different item though, that is an office legal expense, as I recall it.

The Witness: Yes.

Q. Now, just get right down to it—you don't have any litigation with the Standard Oil?

The Master: You see, Mr. O'Brien, the minute you frame a question and say, "You don't

have to sue to collect bills," you are not bringing out what you want at all. You mean to say, "You don't have Shearman & Sterling sue to collect bills."

Q. Do Shearman & Sterling institute any actions to collect bills for you?

A. Gas bills you mean?

Q. Yes.

A. No.

Q. Have they during 1917, 1918 and 1919, up to October 31st?

44177 The Master: He said they had not at all.

Q. Have they represented you in any entanglements or troubles with the Standard Oil Company?

A. We haven't had any.

Q. With the railroad companies?

A. I don't know whether there have been any incidents in connection with our coal supply or any other supply involving the services of railroads that have required their attention. It would not come to my attention if that were so.

Q. Oh, but you would know, Mr. Carter?

Mr. Ransom: Let him answer that question that you asked a while ago that you shut him

44178 off on the moment you asked it.

Q. You would know, Mr. Carter, wouldn't you, if there was some litigation of importance on?

A. Oh, yes.

Q. Have they represented you in any admiralty suits?

A. Not that I am aware of.

Q. Have they represented you in any contract litigations, or claims of breaches of contract?

A. That would be a matter that I would have nothing to do with, it would not come within my jurisdiction.

Q. But you would know, wouldn't you, Mr. Carter?

A. No, I would not of necessity know.

Q. But you are the master mind, you know all about this company, you have testified on every branch of the business.

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Ransom: Let him answer the question that you asked, as to what they do.

Mr. O'Brien: I am going ahead now and asking him in my own way.

Mr. Ransom: I judge so, but it is a very 44180
unfair way.

Q. Mr. Carter, without my putting any questions to you, go ahead and tell us what Shearman & Sterling have done to earn $25,000 in connection with the gas business of the Consolidated Gas Company in 1917, 1918 and 1919. Tell it as completely as you can in your own way, and I won't hamper you with any questions.

The Master: All right now, sit down and let him talk.

Mr. O'Brien: Now, if that is not altruistic I don't know what is.

Mr. Ransom: Also unique. 44181

The Master: See if you can keep quiet until Mr. Carter answers the question.

A. They have advised us—and I don't pretend to know—

Q. Don't put in your apology.

The Master: There you go.

Mr. O'Brien: I have got to object—

The Master: No, you said he could answer it without interruption.

Mr. O'Brien: I didn't throw my case overboard when I said that. That was with a decent reservation.

A. Any department of the company requiring legal advice would go to the counsel for it, and that would include many departments beside the one over which I have more or less control. I do know of some matters that they have advised us in, more particularly condemnation proceedings involving very many hundreds of thousands of dollars, on the issue of our securities, running into millions of dollars. The firm is counsel for the Board of Trustees for the company, and, therefore, advises with the Board and the Executive Committee as well as with the officers of the
44183 company about matters where the corporate interests are involved, and outside of any matters that I would have any personal concern with, which might be very numerous.

The Master: Next question, Mr. O'Brien.

Q. You included in your description of the [illegible] work, work on securities. We were questioning you on the assumption that that was eliminated.

The Master: No, they have their own securities.

A. We have just issued $25,000,000 of convertible bonds.

Q. First, as to the condemnation work. That
44184 brought with it in each instance a special fee, did it not?

A. It did not.

Q. You say that they did not get a special fee in connection with the 44th Street condemnation?

A. I do.

Q. Wasn't their annual retainer increased by reason of that additional work?

A. It was not.

Q. Did they employ other counsel in connection with that?

A. No.

Q. That did not take place in 1917, 1918 or 1919, anyway, did it?

A. It is still taking place, and has been taking place for seven years.

Q. That is in connection with the properties of the company, you would not consider that a gas expense?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Q. Outside of condemnation work can you mention any other work that they did in 1917, 1918 and 1919, I mean specifically?

The Master: Well, did they advise you at all 44186
about your tax problems?

The Witness: Oh, indeed they did.

Q. Oh, you have had special counsel for that.

A. No, we did not.

The Master: Did they advise you with reference to your reports?

The Witness: Yes, to the various departments of the state, to the federal authorities and to the local tax board, and matters of that kind.

The Master: Did they represent you on investigations by the public departments like the Public Service Commission.

The Witness: Yes, sir. 44187

The Master: Did they make any extra charge for that?

The Witness: No, sir.

Q. Mr. Carter, Mr. Garver of the firm of Shearman & Sterling, the senior of that firm, is one of your Executive Committee?

The Master: That is in the record fourteen times. I ruled it out five minutes ago because it had already been covered.

Mr. O'Brien: That is just part of the next question.

44188 Robert A. Carter, Cross.

Q. He is a heavy stockholder in the company.

A. I don't know whether he is or not.

Q. You can't remember that?

A. No, I can't remember that.

Q. Mr. John W. Sterling—

The Master: We have had all these figures, I let you bring out these figures.

Q. Now, in regard to outside special matters of condemnation, you would say that generally the company is free from litigous conditions?

Mr. Ransom: Objected to.

44189 The Master: What do you mean?

Mr. O'Brien: It is a business.

Q. Put in another way, in a plainer way, the gas making business is a business that does not require much of a lawyer, does it?

A. If I ever had that impression before, I have lost it since this case began.

Q. I mean outside the rate cases, Mr. Carter, and outside of attacking, or preparing for some years to attack the statutes.

Mr. Ransom: That is objected to. There is no warrant for such questions.

A. Oh, there are a great many things. If it is 44190 not litigation, it very closely resembles it. For example, the hearings before the Commission on the subject, for example, of British thermal unit standards or other matters, the orders of the Commission about which we require legal advice, and sometimes a great deal of it.

Q. Why did you not have Shearman & Sterling try this case?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial.

Mr. O'Brien: Would you not consider that part of their business?

Mr. Ransom: Mr. Vilas is of Shearman & Sterling. The mere fact that he is not sole trial counsel does not count for anything.

The Master: I will sustain the objection.

Mr. O'Brien: Does your Honor think that is a personal matter?

The Master: No, I think it is apparent—

Mr. O'Brien: Have you announced what position you are going to take on the question of rate expenses?

The Master: Why, I think I have, more or less. 44192

Mr. O'Brien: I would not press these questions if you are going to throw them out.

The Master: I think I have, more or less. I do not think for the purpose of testing the rate—at least I do not see now, and I have not thought so up to this time—that the expense of testing the rate ought to be considered as part of the usual operating expense of a business, in order to determine whether the rate is fair or not. That is my personal view about it.

Mr. Chambers: If that were not so, and it was otherwise, they could spend sufficient on a rate case to make the statute confiscatory. 44193

The Master: I do not want to argue it just now. I am just answering Mr. O'Brien's question in the hope that it will shorten the examination.

Mr. Ransom: We shall have to be heard on that, because it is one of the hazards that a company is subjected to by the state, and the state cannot do these things to a company.

The Master: You will have time to argue it.

Q. Don't you think, Mr. Carter, it would be a wise thing for the company to be insured against lawyers?

44194

The Master: Objection sustained. If you have not anything else, Mr. O'Brien, let Mr. Clark finish so we will get through with Mr. Carter tonight. I understand Mr. Clark has something that he says is real new, or, in his own language, "real hot."

Q. Tell me why you would consider raising Mr. Cortelyou's salary?

Mr. Ransom: Objected to. He has not said anything of the sort.

Q. In other words, on what theory do you admit,
44195 perhaps, that you would have to pay George B. Cortelyou $40,000 a year if this company were shorn of its relations with affiliated companies of all kinds, and just running a little gas business?

Mr. Ransom: A little gas business? That is objected to as absurd and ridiculous on its face.

The Master: Scratch out the word "little." Take the question as referring to this gas business of yours and answer Mr. O'Brien why you think you would have to pay him as much as you are paying him now if you did not have any of the inter-company relations.

A. I think we should have to.

44196 The Master: Why?

The Witness: Because I do not think he would accept anything less, for one thing. I think he would be just as busy for another thing. It would require just as much of his time. I have already testified in that regard. He is a very busy man, he devotes all his time to the service of the company, keeps in very close contact with the various departments; he is constantly advising with, or his advice is constantly sought by the heads of the departments; he controls the company policy in many respects—directs it, rather.

He is a very hard working man and a very valuable man to the company—since I am obliged to discuss that matter.

Q. Of course we would not expect you to criticise your superior in the company, Mr. Carter.

A. I do not mean that; I do not mean that.

The Master: We need not have any more of it.

The Witness: Mr. Cortelyou is my superior officer.

The Master: That is enough of it, Mr. Carter; I won't have any more of it. You have given 44198
it as your opinion and your judgment, under oath, that if this company were separated from all its interallied relations and companies, Mr. Cortelyou's work would be worth just the same and he would be worth just as much to this company. I do not see where you get with these questions; the witness will simply repeat the same thing over and over again.

Mr. O'Brien: I appreciate, your Honor, that the witness would observe the amenities that obtain between fellow officers.

The Witness: It is nothing of the sort.

The Master: It is not that, but when Mr. 44199
Carter says, "In my judgment we need the same officers and have to pay the same salaries," there is not any thing you could ask him would make him change that, he would stick to it.

Mr. O'Brien: Yes, I suppose he would stick to it. But, of course, if we did not have this relation of superior, or president and vice president, I would ask Mr. Carter a question—perhaps I asked it before—if a man of his years of experience—his, Mr. Carter's years of experience—could not dispose of all the vice presidents, and Mr. Cortelyou, too, and run this company.

44200 Robert A. Carter, Cross.

The Master: That is a question, Mr. Carter; you can answer it.

Mr. O'Brien: Of course, his modesty will again come in, perhaps.

The Master: All right. Mr. O'Brien wants to know whether you could not dispose of Mr. Cortelyou and all the other vice presidents and run this company yourself.

The Witness: I should not think of doing it.

The Master: Could you?

The Witness: It is not a question of my opinion
44201 on that subject. I should not think for a moment that I could run it as well as Mr. Cortelyou could.

Q. Mr. Carter, just forgetting modesty and forgetting the fact that you want to preserve the comity that ought to obtain, and observe the amenities that exist between fellow officers, I ask you this simple question and you can give me a simple answer—if you are not acquainted with and if you have not complete mastery over the details of this company, *ad unguem*, as they used to say in classic language—that means to the finger tips?

The Master: Will you admit that allegation,
44202 Mr. Carter?

A. Oh, I think Mr. Cortelyou makes a very much better president than I would make.

Mr. O'Brien: No, that is not the answer.

The Master: No, you admit that you have the details of this company down to your finger tips?

The Witness: Some of it.

Q. What part of it do you disclaim having any knowledge of?

Mr. Ransom: Objected to. He is trying to make the case ridiculous.

The Master: I will sustain the objection.

Mr. O'Brien: Your Honor ought to have that remark stricken from the record.

The Master: What?

Mr. O'Brien: Mr. Ransom's jocular statement across the board here.

Mr. Ransom: It was not jocular at all.

Mr. O'Brien: With a broad grin, that I am trying to make the case look ridiculous.

The Master: What I am trying to do, Mr. O'Brien, is to see if you have anything else that you want to ask Mr. Carter about.

Mr. O'Brien: I will be finished in three ques- 44204
tions, if you will strike that remark from the record.

Mr. Ransom: I object to its being stricken out. I have made it as a ground of objection, seriously enough.

Mr. O'Brien: I have put a fair question to the witness, in a fair way.

The Master: I sustain the objection.

Mr. Ransom: You will strike out the grounds of it?

The Master: Yes. Have you another question?

Mr. O'Brien: It would be the same thing, 44205
along the same line of the office expenses and the general office supplies and all that, I take it?

The Master: We will not get anywhere with that. The witness will simply repeat it over and over again

Mr. O'Brien: If the witness will give us any further detail—

The Witness: The fact.

The Master: It is not useful. I would let you go ahead with it if I thought it was useful at all.

44206

Mr. O'Brien: Exception. You allowed in Complainant's Exhibit 500 as a summary, I take it.

The Master: Yes.

Mr. O'Brien: You do not feel bound by any conclusions of law that may be involved in the labels?

The Master: It does not prove a thing—labels, figures, or otherwise.

Mr. O'Brien: Will your Honor have that, or some inscription, put upon it, so that when it is
44207 printed in the record it will be indicated? You see, if it is separated from the context, this has not been read into the record and if it is separated from the context of the testimony some judge reading it might think, seeing Exhibit 500—

The Master: Mr. O'Brien, all I can say about it is, if I have any power to direct the order in which exhibits shall be printed in the record, I shall direct all summaries to be collected together and printed in the back of the book somewhere, as summaries.

Mr. O'Brien: Will you direct that they be
44208 labeled "Not received as evidence, but purely for the convenience of the Court"?

The Master: I will protect both sides in that respect, so far as I have any power to do it. Anything else, Mr. O'Brien?

Mr. O'Brien: That is all.

By Mr. Clark:

Q. Mr. Carter, calling your attention to this exhibit, which I do not know the number of—

Mr. Ransom: He is again interrogating as to a schedule giving details of the Mayer, Preiss

and Simpson appraisal, which is not in evidence. It is Exhibit 403 for identification.

Mr. Clark: Didn't you put that in?

Mr. Ransom: I offered it and it was excluded. I have no objection to your interrogating Mr. Carter about it.

The Master: I have, if it is not in evidence.

Mr. Ransom: It is Exhibit 403 for identification.

Q. Mr. Carter, Schedule B, Exhibit 472 will you turn to the account of the 18th Street station, the third page of that account, first item, boiler house and 44210
yard sheds retired. That is under the year 1914. That would indicate that it was retired in that year?

The Master: Do you say it was retired some other year?

Mr. Clark: Yes.

The Master: That is not new at all. The witness has testified that a lot of these retirements appear on the books in one year when they were actually discontinued, in that sense, in another year.

Mr. O'Brien: He said as to condemned property.

The Master: No, as to other property, too. 44211

Mr. Ransom: Mr. Mrich testified to the years.

The Master: I will have it clear on the record.

By the Master:

Q. Mr. Carter, have I correctly stated the fact that the date of withdrawal from the book accounts does not indicate necessarily the date when the use of it stopped?

A. No, sir.

Q. And that frequently the use may have stopped some time before it was actually reported as withdrawn?

A. Yes, sir.

The Master: That is covered.

Mr. Ransom: The instances of that were all brought out.

Mr. Clark: That is just the point, they were not brought out.

The Master: Oh, yes, they are all in the record.

14213 Mr. Clark: The instances were not all brought out.

The Master: Yes, they are all in the record.

Mr. Ransom: Mr. Mrich was interrogated on all of those.

Mr. Clark: These were matters that were not brought out by Mr. Chambers.

The Master: No, but they have been brought out earlier in the case. The date when property was discontinued, the use of property was discontinued, as distinguished from the date when it was retired on the books, is in evidence.

Mr. Ransom: The withdrawal entries for 14214 the most part were read in from the journal.

Mr. Clark: I do not think these I have here were ever spread on the record. I take exception to your Honor's ruling.

Adjourned to Wednesday, March 3, 1920, at 9:30 A. M.

Last Complainant's Exhibit 501.
Last Defendants' Exhibit A A-521.